



# The Kiribati Gazettes 2018

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**From August to December 2018  
(Part A)**

REPUBLIC OF KIRIBATI

(No.3 of 2018)



I assent,

Beretitenti

13/10/18

An Act  
entitled

An Act to make provision for the registration and licensing of Kava businesses, control and regulation of responsible practices and procedures in relation to the possession, supply and consumption of Kava by underage persons, penalties for Kava offences and for connected purposes.

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

**PART I – PRELIMINARY**

**1. Short Title**

This Act must be cited as the Kava Act 2018.

**2. Interpretation**

In this Act, unless the context otherwise requires-

“Analyst” means an analyst appointed under section 27 of this Act.

“Authorized officer” means

- (a) A person appointed to be an authorized officer under section 28;
- (b) A member of the Police Services; or



(c) An Inspector of Licensed Premises appointed under section 17 of this Act, "kava", whether prepared as a drink or in another form:

(a) means:

- (i) the plant or a part of the plant *piper methysticum*;
- (ii) a kava lactone ; or
- (iii) a substance produced by chemical synthesis that has the same pharmacological effect as a kava lactone ; and

(b) includes any substance that is not kava or is not identifiable as kava that is used or dealt with by a person together with kava as if it were kava;

"kava lactone" means an extract obtainable from the plant *piper methysticum* that is demethoxy-yangonin, dihydrokavain, dihydromethysticin, kavainmethysticin or yangonin;

"kava plant " means a whole kava plant or a root or part of a root or any other part of a kava plant;

"licence" means a retail licence, a wholesale licence or a Kava Bar Licence issued or renewed by the Kava Licensing Committee established under section 9 of this Act;

"licence area" means any area under the control of Island Councils on each island in Kiribati, that is declared in a Licence to be an area where kava may be sold for consumption;

"licensee" means the holder of a retail licence or a wholesale licence or a Kava Bar licence;

"possession" includes being subject to a person's control notwithstanding that the thing possessed is in the custody of another person.

"premises" includes a structure, building, area of land or other place (whether built on or not) and a part of a structure, building, area of land or place;

"reviewable decision", means the decision of the Kava Licensing Committee reviewable by the High Court;

"sell" includes offer or expose for sale;

"supply" means:

- (a) give, distribute, sell, administer, transport or supply, whether or not for fee reward or consideration or in expectation of fee, reward or consideration;
- (b) have or keep in possession for supply;
- (c) offering to do an act referred to in paragraph (a); or
- (d) doing or offering to do an act preparatory to, in furtherance of, or for the purpose of an act referred to in paragraph (a),

and includes barter and exchange;

"Te Ue" means the presence of an underage female in a Kava Bar for the purposes of serving Kava drinks and as a drinking appetizer to male adults;

"the Secretary" includes any person authorized by the Secretary to exercise his powers and duties under this Act;

"trafficable quantity" means, more than 2 kilograms but less than 25 kilograms of kava;

"Commercial quantity" means, more than 25 kilograms of Kava. but does not include a quantity of kava prepared as a drink;

"vehicle" means any means of transport whether by land or water or through the air;

### **Purpose**

3. The purposes of this Act are as follows:

- (a) To provide for registration and licensing of Kava Businesses.
- (b) To establish mechanisms and procedures for prohibiting and regulating the supply possession and consumption of Kava by underage persons and to encourage responsible practices to reduce health and social problems associated with drinking of Kava.

### **Application of the Act**

4. This Act binds the Republic.

## **PART II**

## **LICENCE**

5.(1) No person shall sell Kava unless he is the holder of one of the following licences –

- (a) Kava Wholesale Licence
- (b) Kava Retail Licence
- (c) Kava Bar Licence

**Kava Wholesale Licence**

6(1). Any person may apply to the Kava Licensing Committee for a Kava Wholesale Licence.

(2) The holder of a Kava Wholesale Licence that authorizes the sale of Kava, who sells any kava in quantities less than 25 kg and as a Kava drink shall be liable to a fine of not less than \$250.00 and not more than \$ 2,500.00, unless he or she is also a licence holder of a Retail Kava Licence and a Kava Bar Licence.

(3) (a) Any person who consumes kava on or in the vicinity of premises in respect of which a Kava wholesale licence is in force shall be liable to a fine of not less than \$ 250.00 and not more than \$ 2,500.00, unless the owner of the premises and the vicinity upon which the premises is located possessed a Kava Bar Licence.

(b) The holder of a Kava Wholesale licence who permits Kava to be consumed on the licensed premises shall be liable to a fine of not less than \$ 250.00 and not more than \$ 2,500.00 unless he or she is also a licence holder of a Kava Bar Licence.

(c) The holder of a Kava Wholesale licence shall not sell, supply, deliver at or deliver from his licensed premises any kava;

(i) On Sundays and Public Holidays; or

(ii) On any other day except between the hours of 8 a.m. to 9:30 pm.

(4) The holder of a Kava Wholesale who sells or supplies Kava at or from, and any person who buys Kava at or takes Kava from the licensed premises in contravention of this section shall be liable to a fine of not less than \$ 250 and not more than \$ 2,500 unless the holder of the Kava wholesale licence also possess a Kava Bar Licence.

**Kava Retail Licence**



- 7 (1) Any person may apply to the Kava Licensing Committee for a Kava Retail Licence.
- (2) The holder of a Kava Retail Licence that authorizes the sale of Kava, who sells Kava drinks shall be liable to a fine of not less than \$250 and not more than \$2,500.00, unless he or she is also a licence holder of a kava Bar Licence.
- (3)(a) Any person who consumes kava on or in the vicinity of premises in respect of which a Kava retail licence is in force shall be liable to a fine of not less than \$ 250.00 and not more than \$ 2,500.00, unless the owner of the premises and the vicinity upon which the premises is located possessed a Kava Bar Licence.
- (b) The holder of a Kava retail licence who permits Kava to be consumed on the licensed premises shall be liable to a fine of not less than \$ 250.00 and not more than \$ 2,500.00 unless he or she is also a licence holder of a Kava Bar Licence.
- (c) The holder of a Kava retail licence shall be allowed to sell and supply from his licensed premises any kava;
- (i) From Monday to Saturday between the hours of 8 a.m. to 9:30 pm,
- (ii) But not on Sundays and Public Holidays
- (4) The holder of a Kava Retail licence who sells or supplies Kava at or from, and any person who buys Kava at or takes Kava from the licensed premises in contravention of this section shall be liable to a fine of not less than \$ 250 and not more than \$ 2,500 unless the holder of the Kava retail licence also possess a Kava Bar Licence.

#### **Kava Bar Licence**

- 8(1) The holder of a Kava Bar Licence may also sell, in addition to Kava cigarettes, tobacco, matches and non-alcoholic beverages.
- (2) The permitted hours in any licensed premises (area) in respect of which a Kava Bar Licence has been granted shall be as follows;
- |   |   |                  |
|---|---|------------------|
| (a) from Monday to Thursday                 | - | from 5pm to 1am  |
| (b) on Friday, Saturday and Public holidays | - | from 5pm to 2am  |
| (c) on Sunday                               | - | from 2pm to 1am. |



- (3) A Kava Bar licence is granted for the purpose of selling Kava or supplying Kava in or from a Kava Bar licensed premises (area), whether to be consumed on or off the premises during the permitted hours as stated under section 8(2) of this Act.
- (4) The holder of a Kava Bar Licence shall maintain a quiet environment by not producing unnecessary noise that will interfere with the peace and quiet enjoyment of the neighbourhood during the permitted hours.
- (5) The holder of a Kava Bar Licence in respect of premises not exclusively or mainly used for the sale of Kava may, having obtained a permit from the Kava Licensing Committee and on payment of the prescribed fee, sell or supply Kava during such hours as stated under subsection 2 above.
- (6) The holder of a Kava Bar licence shall keep painted on the front of his licensed premises, in letters at least 2 inches high, his name in full followed by the words – “licensed Kava Bar”
- (7) The holder of a Kava Bar licence who has obtained a permit under section 8(3) above shall affix such permit in a conspicuous place on his licensed premises (area).
  - (a) The licensee who fails to comply with the requirements of this section shall be liable to a fine of not more than \$250 and not less than \$2,500.
- (8) The holder of a Kava Bar licence shall install toilets in his or her Kava Bar for the use of his customers.
  - (a) A licensee who fails to comply with the requirements of this section shall be liable to a fine of not less than \$ 250 and not more than \$ 2,500
- (9) Any person may apply for the three(3) different types of Licence provided that he or she complies with the conditions for each type of Licence.

### **Conferral of Jurisdiction**

### **Licensing Authority**

9 (1) The Minister may by notice –

- (a) Appoint 1 or more Kava licensing committees each consisting of a chairman and not less than 2 other members, and
- (b) Define the part or area of Kiribati over which a Kava licensing committee so appointed shall exercise its authority.

(2) A member of a committee shall hold office until –

(a) his appointment is revoked, or

(b) he submits his resignation in writing to the Minister.

(3) In the absence of the chairman from any meeting of a committee, the other members present shall appoint 1 of them to act as chairman.

(4) Three members of a committee, including the chairman shall form a quorum.

#### **Functions of committee**

10 (1) The functions of a committee, in respect of the licences that may be issued under this Act are to consider and determine all applications –

(a) for the grant and renewal of licence, and

(b) for cancellation or variation of the terms of any licence.

(2) In the exercise of its functions under subsection (1), any decision of the committee, subject to section 18 shall be final.

#### **Jurisdiction of Committee**

11(1) Applications for licences shall be made to the committee of the area in which the area or premises intended to be licensed are situated.

(2) A committee before granting any licence shall be satisfied that –

(a) the premises or area to which the application relates are fit and proper for the purpose of selling Kava, having regard to the type of licence applied for,

(b) the parts of the premises on which Kava is to be stored and sold are sufficiently defined in the application, or delineated on a plan annexed thereto, and

(c) the premises or area to which the application relates especially for a Kava Bar licence have toilets for use by any person..

(3).The Kava Licensing Committee may by notice declare an area to be a prohibited area in relation to the drinking of Kava. The notice may be amended anytime by the Committee.

## **PART III- ADMINISTRATION**

### **Division 1- Register**

12. The Secretary of the Ministry responsible for Internal Affairs must –
- (1) establish a register of persons licensed to sell and supply Kava;
  - (2) keep the register up to date;
  - (3) The register may be kept wholly or partly by computer; and
  - (4) Any person may inspect the register or a copy of it free of charge during normal office hours.

## **APPLICATION FOR A LICENCE**

### **LICENCE**

### **PROCEDURE RELATING TO LICENCE**

#### **Notice of Licence**

- 13(1) No application shall be entertained by a committee unless such application has reached the committee at least 28 days or 4 weeks before the day of the meeting at which such application is to be considered.
- (2) (a) A committee shall hold its annual meeting in November of each year but shall meet at such other times as may be necessary for the transaction of licensing business.
- (b) A committee shall give at least 2 months notice of the time, day and place appointed for its annual meeting by –
- (i) publishing such notice in any Government publication, or
  - (ii) causing such notice to be posted at each police station in the Kava licensing area.
- (3) The Committee shall within 10 days before any meeting cause to be published –
- (a) in a government publication, or

(b) by posting at each police station in the licensing area, a list containing the names of applicants whose applications are to be considered at that meeting, the type of licence, the nature of the application, whether for a grant, renewal, or removal and the address of the premises to which the application refer.

(4) An application for the grant and renewal of a Kava Bar licence may require that any of the following information is to be provided by an applicant in support of an application for a Kava Licence:

(a) in the case of an applicant (whether alone or jointly with another person or as a partner) who is a natural person:

- (i) the name of the applicant;
- (ii) the residential and business addresses of the applicant;
- (iii) 4 written references as to the character of the applicant;
- (iv) a written curriculum vitae of the applicant; and
- (v) details of criminal record of the applicant.

(b) in the case of an applicant (whether alone or jointly with another person or as a partner) who is a company:

- (i) the name of the applicant;
- (ii) the names of the directors, associates and other officers of the applicant;
- (iii) the addresses of the registered office and principal place of business of the applicant;
- (iv) a certified copy of the certificate of incorporation of the applicant;
- (v) a certified copy of the constitution or rules of the applicant; and
- (vi) a certified copy of a search showing the date of incorporation, principal place of business and the names of the directors, secretaries and shareholders of the applicant.

(c) in the case of an applicant (whether alone or jointly with another person or as a partner) who is an incorporated association:

- (i) the name of the applicant;



- (ii) the names of the public officer, committee members and other officers of the applicant;
  - (iii) the address where the business of the applicant is being carried on;
  - (iv) a certified copy of the certificate of incorporation of the applicant; and
  - (v) a certified copy of the constitution of the applicant.
- (d) if 2 or more persons making an application are partners – a copy of their partnership agreement.
- (e) if an applicant will be conducting business under the licence the subject of the application under a business name registered under the Registration of Business Names Act – a copy of the entry in the Registration of Business Names provided by ministry responsible under that Act showing the registration.
- (f) The details of the:
  - (i) premises and the area that the applicant will use;
  - (ii) number of employees or agents the licensee will engage;
  - (iii) manner of importation of the kava into Kiribati Jurisdiction or the licence area concerned;
  - (iv) manner in which the applicant proposes to purchase or otherwise be supplied with, sell and store the kava; and
  - (v) a statement of intent or a plan to support and implement health measures or health programs of the Ministry responsible for health and medical services relating to the control of Kava drinking as the holder of the licence for facilitating minimization of harm and other responsible practices relating to the supply, possession and consumption of Kava.
- (5) Upon the grant of an application for the grant, renewal of a licence, the committee shall issue to the applicant a certificate in the appropriate form; Form 4 in Schedule 1 of this Act.
- (6) The applicant shall present his certificate to the Secretary who, upon receipt of the appropriate licence fee, shall issue the licence accordingly. The types of Licence Forms are provided in Schedule 1 as follows:

(b) by posting at each police station in the licensing area, a list containing the names of applicants whose applications are to be considered at that meeting, the type of licence, the nature of the application, whether for a grant, renewal, or removal and the address of the premises to which the application refer.

(4) An application for the grant and renewal of a Kava Bar licence may require that any of the following information is to be provided by an applicant in support of an application for a Kava Licence:

(a) in the case of an applicant (whether alone or jointly with another person or as a partner) who is a natural person:

- (i) the name of the applicant;
- (ii) the residential and business addresses of the applicant;
- (iii) 4 written references as to the character of the applicant;
- (iv) a written curriculum vitae of the applicant; and
- (v) details of criminal record of the applicant.

(b) in the case of an applicant (whether alone or jointly with another person or as a partner) who is a company:

- (i) the name of the applicant;
- (ii) the names of the directors, associates and other officers of the applicant;
- (iii) the addresses of the registered office and principal place of business of the applicant;
- (iv) a certified copy of the certificate of incorporation of the applicant;
- (v) a certified copy of the constitution or rules of the applicant; and
- (vi) a certified copy of a search showing the date of incorporation, principal place of business and the names of the directors, secretaries and shareholders of the applicant.

(c) in the case of an applicant (whether alone or jointly with another person or as a partner) who is an incorporated association:

- (i) the name of the applicant;

- (ii) the names of the public officer, committee members and other officers of the applicant;
  - (iii) the address where the business of the applicant is being carried on;
  - (iv) a certified copy of the certificate of incorporation of the applicant; and
  - (v) a certified copy of the constitution of the applicant.
- (d) if 2 or more persons making an application are partners – a copy of their partnership agreement.
- (e) if an applicant will be conducting business under the licence the subject of the application under a business name registered under the Registration of Business Names Act – a copy of the entry in the Registration of Business Names provided by ministry responsible under that Act showing the registration.
- (f) The details of the:
  - (i) premises and the area that the applicant will use;
  - (ii) number of employees or agents the licensee will engage;
  - (iii) manner of importation of the kava into Kiribati Jurisdiction or the licence area concerned;
  - (iv) manner in which the applicant proposes to purchase or otherwise be supplied with, sell and store the kava; and
  - (v) a statement of intent or a plan to support and implement health measures or health programs of the Ministry responsible for health and medical services relating to the control of Kava drinking as the holder of the licence for facilitating minimization of harm and other responsible practices relating to the supply, possession and consumption of Kava.
- (5) Upon the grant of an application for the grant, renewal of a licence, the committee shall issue to the applicant a certificate in the appropriate form; Form 4 in Schedule 1 of this Act.
- (6) The applicant shall present his certificate to the Secretary who, upon receipt of the appropriate licence fee, shall issue the licence accordingly. The types of Licence Forms are provided in Schedule 1 as follows:



- (a) Kava Retail Licence in Form 1;
  - (b) Kava Wholesale Licence in Form 2; and
  - (C) Kava Bar Licence in Form 3.
- (7) A certificate shall be void unless presented to the Secretary, together with the appropriate licence fee, within 2 months of the date of its issue.

### **Licence Fees**

14. The Licence Fees shall be paid into and form part of the revenue of the particular Local Government Council on each Island, however in any other case, such fees or fines shall be paid into the consolidated fund.

### **Fees**

15. The fees payable in respect of a Kava Retail Licence, a Kava Wholesale Licence and a Kava Bar Licence shall be those listed in Schedule 2 of the Act.

16. The Minister, acting in accordance with the advice of Cabinet, may by order amend Schedule 2.

### **Objections**

17. (1) Objections to the grant of any certificate under this Act may be made to the committee by –
- (a) any other licensee in the licensing area, or any 3 or more residents of the licensing area, in which the premises to which the applications refers are situated or intended to be situated;
  - (b) any police officer; or
  - (c) any sanitary inspector or any person authorized in writing by the Secretary on any of the following grounds –
    - (i) that frequent breaches of the law have occurred on the licensed premises
    - (ii) that the premises intended to be licensed are unhygienic or otherwise unsuitable for the sale of kava;



- (iii) that the reasonable requirements of the neighborhood do not justify the issue of the licence.

### **Case Stated**

18. Any applicant or objector aggrieved by a decision of a committee on the ground that it is erroneous in point of law may apply to that committee to state a special case to the High Court and the committee shall state a case accordingly.

### **Gathering of underage at night for the purpose of drinking kava**

19.(1) Where an individual person or a group of persons is or are found in a public place between the hours of 10:00pm and 6:00am roaming around without any reasonable reasons, the officer in charge of the police station in the area where that place is, upon reasonable suspicion that the individual person or the group of persons is or are under the age of 18 years old and the purpose of their gathering is to drink Kava, shall execute the following orders:

- (a) Order the individual or the group of individuals to disperse and leave the area at once.

- (b) Order that the individual or the group of individuals return to their respective homes at once.

(2) Any person refusing, resisting or obstructing the executions of the police officer's order commits an offence.

- (a) in the case of a first offender the police shall give him a warning.

- (b) However, a repeat offender shall be taken to court and the court may deal with him or her as follows:

- (i). if he or she is under 18 years old, in a manner prescribed for penalizing juveniles under the relevant provisions of the Juvenile Justice Act 2015.

## **PART IV – ENFORCEMENT OFFENCES**

### **Supply and Consumption of kava**

- 20(1) A person must not supply kava to another person, or take part in the supply of kava to another person, unless doing so in accordance with a licence.

Maximum penalty: In the case of a quantity less than the trafficable quantity a fine of not less than \$100 and not more than \$250 or imprisonment for 6 months.

- (a) In the case of a trafficable quantity a fine of not less than \$250 and not more than \$2500 or imprisonment for 2 years.
- (b) In the case of a commercial quantity a fine of not less than \$500 and not more than \$5,000 or imprisonment for 5 years.
- (2) If any person holding a licence, sells or exposes for sale any Kava, except at the place at which that licence authorizes him to sell that Kava shall be liable to a fine of not less than \$250 and not more than \$2,500.
- (3) Any person not holding a licence on whose premises, a sign writing, painting or other mark is exhibited which may imply or give reasonable cause for believing that such premises (area) are licensed for the sale of Kava or that Kava is sold or supplied therein shall be liable to a fine of not less than \$250 and not more than \$2500.
- (4)(a) A licensee in respect of a Kava Bar licence only may refuse to admit to or may expel from the licensed premises (area) any person who is violent, quarrelsome or who is using foul language and a drunken person.
- (b) If any person contravenes the above subsection, after being requested by the licensee or his servant or agent or any police officer to leave the premises, fails to do so, he shall be liable to a fine of not less than \$100.00 or not more than \$250.
- (5) A police officer shall, on the demand of the licensee in respect of a Kava Bar Licence or his servant or agent expel from the licensed premises a person liable to be expelled under this section and may use any reasonable degree of force requested for that purpose.
- (6) A justice of the peace, magistrate or any appropriate judicial officer upon being satisfied by information on oath that there is reasonable ground for believing that any Kava is sold or exposed or kept for sale at, or in a place not licensed for such purpose, may issue a search warrant to a police officer authorizing him to enter that place which shall be named in the warrant, by use of reasonable force if need be, and search the place for Kava and search and remove any Kava that

the police officer has reasonable grounds for supposing to be in the place for the purpose of unlawful sale there or elsewhere, and the receptacles containing such Kava.

- (7) Where a police officer search any Kava in pursuance of a warrant under this section, any person found in the place shall, unless he proves that he is there for a lawful purpose, be liable to a fine of \$ 250.00

### **Production of Identity Card by a Person**

21. The holder of a Kava Licence, if he believes on reasonable grounds that a person is under 18 years old, is entitled to demand from that person a disclosure of any form of identity card for the purpose of ascertaining the age of that person.

22. Upon ascertaining the age of a person to be under 18 years old, the Kava licence holder of a Wholesale, Retail or Kava Bar Licence shall not sell Kava to that person and in the case of a Kava Bar Licence holder he or she shall demand a police officer to expel such person or to order that such person leave the licence area(premises) immediately.

23 (1) A person must not supply kava to:

(a) a person who has not attained the age of 18 years; or

(b) a person who the person knows or has reason to believe will supply the product to a person who has not attained the age of 18 years.

Maximum penalty: In the case of a quantity less than the trafficable quantity – a fine of not less than \$100 dollar and not more than \$250 or imprisonment for 6 months.

In the case of a trafficable quantity – a fine of not less than \$250 and not more than \$2500 or imprisonment for 2 months.

In the case of a commercial quantity – a fine of not less than \$500 and not more than \$5,000 or imprisonment for 5 years.

- (2) A person must not send a person who has not attained the age of 18 years to purchase or collect kava from any person or a licensee.

Maximum penalty: In the case of a quantity less than the trafficable quantity – a fine of not less than \$100 and not more than \$250 or imprisonment for 6 months.



In the case of a trafficable quantity – a fine of not less than \$250 and not more than \$2,500 or imprisonment for 2 years

In the case of a commercial quantity – a fine of not less than \$500 and not more than \$5,000 or imprisonment for 5 years.

(3) A holder of a Kava Bar licence commits an offence if he or she allows:

- (a) a person who has not attained the age of 18 years; or
- (b) a person who the licence holder knows or has reason to believe will allow a person who has not attained the age of 18 years,  
to consume Kava in the licence area or licensed premises

Maximum Penalty: a fine of not less than \$250 and not more than \$2,500 or imprisonment for 2 years.

(4) A holder of a Kava Bar Licence commits an offence if he or she allows; a female person under the age of 18 years to be present in the Kava licence area for the purpose of consuming Kava as well as performing acts known as 'Te Ue' to any adult males drinking Kava in such licence area.

Penalty: a fine of not less than \$250 and not more than \$2,500 or 2 years imprisonment

- (a) and any acts amounting to a sexual offence shall be prosecuted and penalized under the Penal Code or any other related laws.

## **PART V – MISCELLANEOUS**

### **Cancellation of Licences**

24(1) Without prejudice to any other provisions of this Act, if the holder of a licence is-

- (a) sentenced to imprisonment for a term exceeding 6 months;
- (b) convicted within a period of 12 months of a second offence against this Act;
- (c) convicted of failing to comply with any of the conditions of his Kava Bar licence in particular the Kava Licensing Committee, in the case of paragraph (a); and the court upon conviction, in the case of paragraph (b) or (c), may cancel the licence.



25(1) Notwithstanding anything contained in this Act, the Minister may by order, whenever he deems it expedient to do so, direct the closure of any licensed (premises) area on such day or days and for such times as may be specified in the order.

(2) A licensee who fails to comply with an order made under subsection (1) shall be liable to a fine of not less than \$250 and not more than \$2,500.

26. Without prejudice to any other provisions of this Act, whenever a police officer believes on or has reason to believe that an offence has been, or is being, or is about to be committed under this Act, he may seize and take away all Kava and all receptacles and articles connected with such offence, and the same may, upon conviction in respect of such offences, be forfeited by the court.

#### **Appointment of Analyst**

27 The Minister may by notice in the Gazette appoint a person to be an analyst for the purposes of carrying out the sampling, analysis or examination of a thing seized under this Act, if there is a dispute as to the confirmation of whether or not a thing seized is a kava.

#### **Authorized Officers**

28 The Minister may by notice in the Gazette appoint a person to be an authorized officer for the purposes of this Act.

#### **Forms**

29.(1) A Licence shall be in the appropriate form contained in Schedule 1

(2) The Minister may by order amend the form contained in Schedule 1.

30. The Minister, acting in accordance with the advice of Cabinet, may make regulations for all or any of the following matters-

(1) dispensing with or relaxing any of the provision of this Act in respect of any licensing area and in relation to any person or class of persons

(2) generally carrying into effect the provisions of this Act.

**SCHEDULE 1**

**(Section 13(6)(a))**

**FORM 1**

**KAVA RETAIL LICENCE**

In accordance with the certificate of the Kava Licensing Committee for (a)  
..... dated the ..... day of .....  
201.. and the prescribed fee having been paid, (a) (b).....  
is hereby granted to (c)..... of .....

In respect of the following premises (d)

.....  
.....  
.....  
.....

This Licence is issued subject to the following conditions (e) –

- (1) not allowed to sell or supply to an underage. The meaning of underage is stated under section 2 of this Act.
- (2) If applicant sells and supplies kava drink and also allows drinking on premises applicant must possess a Kava Bar Licence
- (3) If in possession of a Kava Bar Licence, applicant must comply with all requirements or conditions stated under Kava Bar Licence.
- (4) Not allowed to sell on Sundays and Public Holidays.
- (5) including any other conditions that the Kava Licensing Committee may deem fit to impose on the licensee

.....

This Licence will expire on the 31<sup>st</sup> December 20..., unless earlier cancelled.

Dated this ..... day of ..... 20...

Chairman .

(Section 13(6)(b) )

FORM 2

KAVA WHOLESALE LICENCE

In accordance with the certificate of the Kava Licensing Committee for (a)  
..... dated the .....day of .....  
20... and the prescribed fee having been paid, (a) (b).....  
is hereby granted to (c)..... of .....

In respect of the following premises (d)

.....  
.....  
.....

This Licence is issued subject to the following conditions (e) –

- 1) not allowed to sell or supply an underage. The meaning of underage is stated under section 2 of the Act.
- 2) only allowed to sell and supply in quantities of not less than 25 kg
- 3) If applicant sells in quantities less than 25 kg then applicant must possess a Kava Retail Licence
- 4) Not allowed to sell Kava as a drink on premises unless in possession of a kava Bar Licence.
- 5) Not allowed to sell and supply Kava on Sundays, public holidays unless in possession of a Kava Bar Licence.
- 6) Allowed to sell between the hours of 8:00 am to 6:00 pm, unless in possession of a Kava retail or Kava Bar Licence.
- 7) including any other conditions that the Kava Licensing Committee may deem fit to impose on the licensee

This Licence will expire on the 31<sup>st</sup> December 20..., unless earlier cancelled.

Dated this .....day of .....20...

Chairman

(Section (13)(6)(c))

FORM 3

KAVA BAR LICENCE

In accordance with the certificate of the Kava Licensing Committee for (a)  
..... dated the ..... day of .....  
20... and the prescribed fee having been paid, (a) (b).....  
is hereby granted to (c)..... of .....

In respect of the following premises (d)

.....  
.....  
.....  
.....

This Licence is issued subject to the following conditions (e) –

- 1) The holder of a Kava Bar Licence shall keep painted on the front of his licensed premises, in letters 2 inches high, his name in full followed by the words Licenced Kava Bar or Licensed to retail Kava drink.
- 2) Not allowed to sell and supply in Wholesale and Retail unless in possession of both the Kava Wholesale Licence and the Kava Retail Licence.
- 3) That the premises or area is a fit and proper place for selling Kava Drink
- 4) That the premises or area is fitted with proper toilets
- 5) That the licensee shall ensure not to produce unnecessary noise to the neighborhood during the permitted hours.



6) That "Te Ue" is not allowed inside the Kava Bar. The meaning of "Te Ue" is to be found in section 2 of the Act.

7) including any other conditions that the Kava Licensing Committee may deem fit to impose on the licensee.

.....  
.....

8).....

etc.

This Licence will expire on the 31<sup>st</sup> December 2017, unless earlier cancelled.

Dated this .....day of .....2017

.....

Chairman

SCHEDULE 1

(Section 11(1))

FORMS OF CERTIFICATES FOR LICENCES

FORM 4

( For issue or renewal)

This certificate authorizes the Secretary to issue/renew ( a) a  
(b).....in the name of (c) .....in respect of  
the following premises (d) –

.....  
.....  
.....

subject to the following conditions (e) –

- 1.
- 2.
- 3.

Dated this .....day of ....., 20...

Kava Licensing Committee for (f).....

Notes.

- (a) Delete whichever is necessary
- (b) State Category of licence whether for a Kava Retail Licence, Kava Wholesale or a Kava Bar Licence
- (c) State name of licensee

(d) State locality and give full description of premises or of parts thereof in respect of which the licence is granted.

(e) Insert conditions, if any.

(f) State Licensing area.

Dated this .....day of .....2017

.....  
Chairman

SCHEDULE 2

FORM 1

KAVA LICENCE FEES

\$

Kava Retail Licence.....

Kava Wholesale Licence.....

Kava Bar Licence.....



## **Explanatory Memorandum**

The main purpose of the Kava Bill is simply to formally regulate the use of Kava as a drink by members of the general public in the Kava Bars because of the negative social, economic and health problems caused by Kava drinking, especially the non-productivity if members of the general public to carry out their daily activities in their respective communities because of the effect of drinking Kava. There was no law before that specifically regulate Kava drinking especially in the Kava Bars. This bill addresses the social, economic and health problems associated with drinking of Kava and also the protection of the category of persons known as under age persons from involving with the Kava drinking especially female underage by making it an offence for those businesses selling Kava to sell and supply an underage with Kava drink.

The Bill consist of five (5) Parts;

### **Part I – Preliminary**

This part deals with short title of the Act, commencement date, the interpretation section, the purposes of the Act and the Application of the Act.

There are two main purposes of the Act, the first one is registration and licensing of Kava businesses and the second one is to establish mechanisms and procedures for prohibiting and regulating the supply possession and consumption of Kava by underage persons and to encourage responsible practices to reduce health and social problems associated with drinking of Kava.

### **Part II – Types of Kava Licence**

This part deals with the types of licence , (a) Kava Wholesale Licence (b) Kava Retail Licence and (c) Kava Bar Licence:

The 3 (three) types of licences stated above, have been identified and intended to apply in relation to the way Kava has been and is now being traded and used as a drink to members of the public. That it can be sold by wholesale and retail, however the main focus of the Act is to regulate drinking of Kava inside the Kava Bars where Kava powder had been prepared for drinking purposes. Thus, the Act regulates wholesales and retail as well as selling Kava as a drink in the Kava Bars through the three different types of Licence stated above. The applicant therefore is required to comply with the conditions of the particular type of licence he or she

has applied for, and non-compliance will make him or her liable to a fine and /or imprisonment. However, the Act also allows for an applicant to apply for all the three kinds of Licences, in which case, he or she will then be required to pay for all those different kinds of Licence fees, but in this case he or she will not be susceptible to the penalties prescribed under the Act. In addition, an applicant applying for all the three types of Licences is required to fulfill or to comply with all the requirements of all the types of Licences especially for a Kava Bar Licence, and non-compliance will render his or her application to the committee not being granted or not being renewed.

The holder of a Kava Bar Licence shall keep painted on the front of his licensed premises in at least 2 inches high, his name in full followed by the words "licensed Kava Bra" Kava Bar Licence. The Kava Licence allows for the sale of cigarettes, tobacco, matches and non-alcoholic beverages in addition to Kava drink and the permitted time in which to open and close are from 6:00 pm to 12:00 am. The holder of a Kava Bra Licence shall maintain a quiet environment by not producing unnecessary noise that will interfere with the peace and quiet enjoyment of the neighborhood during the permitted hours. In addition, the Kava Bar Licence also requires the holder to install toilets for use by customers.

### **Part III – Administration**

This part deals with administration by establishment of a register of persons licenced to sell and supply Kava, the Secretary of the Ministry responsible for Internal Affairs has been entrusted with responsibility of administering the register. This part also provides for a procedure relating to applications to the Kava Licensing Committee for the three types of Kava Licences. For a grant or renewal an applicant must furnish Committee with the following information; name of applicant ( Whether alone or jointly with another person as a partner ) who is natural persons, the name of applicant, residential and business addresses etc under section 13(4) (a)(i) to (v). In the case of applicant (whether alone or jointly with another person or as a partner) who is a company, the things required under section 13(4)(c)(i) to (vi). In the case of an applicant (whether alone jointly with another person or as a partner) who is an incorporated association the things required: the things required under section 13(4)(c)(i) to (v). If 2 or more persons making an applications are partners – a copy of their partnership agreement (section 13(4)(d). If an applicant will be conducting business under the licence of the subject of the application under a business name registered under Registration of Business Names provided by Ministry responsible under that Act showing the registration. (Section 13(4) (e)). Also under section 13(4) (f) an applicant is required to disclose details of the premises and the area that the applicant will use, number of employees or agents the licensee will engage, manner of

importing Kava to Kiribati and a statement of intent or a plan to support and implement health measures or health of Ministry responsible for health and medical services relating to control of Kava drinking.

Under section 13(6) Upon the grant of an application, the committee shall issue to the applicant a certificate in the appropriate form; Form 4 in schedule 1 of the Act. The applicant shall present her or his certificate to the Secretary who upon receipt of the appropriate licence fee shall issue the type of license accordingly.

#### **Part IV – Enforcement**

A person not holding a Kava Licence on whose premises a sign is put up that he or she sells Kava may also be liable to a fine under section 20(3). A Kava Bar licence holder has the right not to admit persons who are violent, quarrelsome drunk etc under section 20(4) (a). A police officer may also assist to expel a person from a Kava Bar who is quarrelsome, drunk etc under instruction of a Kava Bar Licence Holder. A justice of the peace or magistrate upon satisfied that by information on oath that there is reasonable ground for believing that any Kava is sold or exposed or kept for sale, in a place not licensed for such purpose to issue a warrant for the research of the place by a police officer. A person found near the place searched by the police officer shall be liable to a fine under section 20(7). The Holder of any of the three Kava Licences is allowed to ask card for the purposes of ascertaining his or her age and upon ascertaining that he or she is an underage such holder of a Kava Licence is entitled not to sell Kava to that person. A person who supply Kava to an underage herein referred to as under 18 years old, is liable to a fine under section 23(1) (b). A person who send an underage to purchase or collect Kava from any person or licensee is liable to a fine under section 23(2). A holder of a Kava Bar Licence who allow an under age to consume Kava drink is liable to a fine under section 23(3). A holder of a Kava Bar Licence who allows a female person under the age of 18 years to be present in the Kava Bar for "Te Ue" purposes is liable to a fine under section 23(3)(4).

#### **Part V – Miscellaneous**

This part deals with the cancellation of licence under section 24(1) in circumstances where, the holder of a licence is sentenced to imprisonment, a repeat offender and convicted of failing to comply with any of the conditions of his licence.

The Ministers powers are stated under section 25(1) to close down any licence area under an order. Under section 26, it provides a police officer with a power to seize and take away all



Kava if he has a reason to believe that an offence has been, or is being , or is about to be committed under the Act. Likewise upon conviction such Kava can be forfeited by the court. Section 27 provides for appointment of Analyst by the Minister, whilst section 28 provides for the Minister's power to appoint a person to be an authorized officer for the purposes of this Act.

And finally section 30 provides for the Minister power, acting in accordance with the advices of Cabinet, to make regulations for the dispensing with or relaxing any of the provisions of this Act in respect of any licensing area any person or class of persons and for the general carrying into effect of the provisions of this Act.

**Hon.Kobebe Taitai**  
Minister for Ministry of Internal Affairs

Legal Report

I Hereby that in my opinion none of the provisions of the above Act conflicts with the constitution and the Honorable Minister my properly assent to the Act

**Ms Tetiro Maate Semilota**  
Attorney General

**CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU**

This printed impression of the Kava Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 24th April 2018 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**

**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this <sup>13</sup> day of <sup>October</sup> ..... 2018.

**Eni Tekanene**

**Clerk of the Maneaba ni Maungatabu**

REPUBLIC OF KIRIBATI  
(No. of 2018)

I assent,



Beretitenti

11/9/2018

An ACT

entitled

AN ACT TO AUTHORISE SUPPLEMENTARY APPROPRIATION OF MONIES  
OUT OF THE CONSOLIDATED FUND FOR RECURRENT EXPENDITURE FOR  
THE SERVICE OF THE YEAR ENDING 31 DECEMBER 2018 (Number 2)

Commencement:

2018

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

**Short title:**

1. This Act may be cited as the Supplementary Appropriation (No. 2) Act 2018.

**Authorisation of issue from the Consolidated Fund**

2. The issue from the Consolidated Fund is hereby authorized of a sum of \$8,256,341 to be applied for recurrent expenditure to the service of the year ending 31 December 2018.

**Appropriation**

3. The sum specified in section 2 shall be appropriated for the supply of the Heads of Expenditure specified in Column 1 of the Schedule 1 annexed to this Act in the sums respectively specified in relation thereto in Column 2 of the Schedule 1.



## SCHEDULE 1

<b>Column 1</b> <b>Head of Expenditure</b>	<b>Column 2</b> <b>Additional</b> <b>Expenditure</b> <b>Authorised</b>
<b>02</b> Local Contribution to Development Fund	\$6,032,352
<b>10</b> Public Service Office	\$9,400
<b>13</b> Public Service Commission	\$41,743
<b>15</b> Ministry of Internal Affairs	\$37,815
<b>16</b> Ministry of Environment, Lands and Agricultural Development	\$21,924
<b>27</b> Ministry of Infrastructure and Sustainable Energy	\$261,956
<b>37</b> Ministry of Justice	\$56,457
<b>31</b> Subsidies, Grants and Other Commitments	\$1,794,694
	<hr/>
<b>TOTAL</b>	<b>\$8,256,341</b>

# SUPPLEMENTARY APPROPRIATION (NO. 2) ACT 2018

## EXPLANATORY MEMORANDUM

- The Act charges upon the Consolidated Fund a sum which is required for recurrent expenditure for the year ending 31<sup>st</sup> December 2018.
- The Act provides that this additional amount charged upon the Consolidated Fund shall be divided between and expended upon the services listed in the Schedule to the Act.
- The Act is presented to the Maneaba ni Maungatabu in accordance with the requirements of section 109(3) and (4) of the Constitution.

Hon Dr Teuea Toatu  
Minister for Finance and Economic Development  
August 2018

**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Supplementary Appropriation (No.2) Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 28<sup>th</sup> August 2018 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

**CERTIFICATE OF THE SPEAKER OF THE MANEABA NI MAUNGATABU**

I certify that the above Act was on the 28<sup>th</sup> August 2018 passed by the Maneaba ni Maungatabu on a Certificate of Urgency under section 68(3)(a) of the Constitution.

**Hon. Tebuai Uai**  
**Speaker of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 11 day of  
September 2018.

*for* **Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

REPUBLIC OF KIRIBATI

(No. of 2018)



I assent,

Beretitenti

Commencement:

13/10/ 2018

**AN ACT**

entitled

**AN ACT TO AMEND THE CONSTITUTION TO PROVIDE FOR ADDITIONAL  
QUALIFICATION REQUIREMENTS FOR MEMBERSHIP TO THE MANEABA NI  
MAUNGATABU.**

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

**1. Short title**

This Act may be cited as the Constitution (Amendment) Act 2018

**2. Amendment of section 55**

Section 55 is hereby amended by repealing the whole section and substituting with the following:-

**Qualifications for elected membership**

**55.** Subject to the provisions of the next following section and of section 118 (1) of this Constitution a person shall be qualified to be elected as an elected member of the Maneaba ni Maungatabu if, and shall not be so qualified unless—

- (a) he or she is a citizen of Kiribati;
- (b) he or she has attained the age of 21 years; and
- (c) any other requirements prescribed by law.



## **Explanatory Memorandum**

The Amendment will allow for the provision of further qualification requirements for members of the Maneaba ni Maungatabu. Such further qualification requirements have to be prescribed by law (Act of Parliament). This is made possible by inserting a new paragraph (c) that allows the Maneaba to prescribe further qualifications by law.

.....  
Hon Natan Teewe  
Minister for Justice

**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Constitution (amendment) Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 27<sup>th</sup> August 2018 and is found by me to be a true and correctly printed copy of the said Bill.

*PP* **Eni Tekanene**

**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this ...<sup>13</sup>..... day of  
.....*October*..... 2018.

**Eni Tekanene**

**Clerk of the Maneaba ni Maungatabu**

# THE REPUBLIC OF KIRIBATI



## FOREIGN INVESTMENTS ACT, 2018

### Arrangement of Sections

#### PART 1 – PRELIMINARY MATTERS

- 1 Short Title
- 2 Commencement
- 3 Interpretation
- 4 Objects of the Act

#### PART 11 – ADMINISTRATION OF ACT

- 5 Incentives
- 6 Administration and implementation of Act
- 7 Integrated client service facility
- 8 Confidentiality

#### PART 111 – INVESTORS, ECONOMIC SECTORS AND BUSINESS ACTIVITIES

- 9 Reserved List
- 10 Restricted List
- 11 Prohibited List
- 12 Amendment of Schedules
- 13 Treatment of existing investments after reservation of economic sectors and business activities

#### PART 1V – INVESTMENTS

- 14 Application for approval of investments
- 15 Cabinet to approve application
- 16 Issue or refusal of certificate
- 17 Certificate
- 18 Duration of certificate

- 19. Cancellation of certificate
- 20. Holder to be heard

## **PART V – RIGHTS AND OBLIGATIONS OF INVESTORS**

- 21. Compliance with all applicable laws
- 22. National Treatment
- 23. Expropriation
- 24. Payment of compensation
- 25. Rights of review concerning expropriation and compensation
- 26. Transfer of funds

## **PART V1 – APPEAL**

- 27. Investment Appeal Panel
- 28. Right of Appeal

## **PART V1I – MISCELLANEOUS PROVISIONS**

- 29. Offences
- 30. Electronic Documents
- 31. Regulations
- 32. Repeal of laws
- 33. Savings

## **SCHEDULE**



THE REPUBLIC OF KIRIBATI



(no. 14 of 2018)

I assent,



Beretitenti  
24/12/2018

An Act

entitled

**An Act to provide for the registration, regulation and promotion of foreign investment in Kiribati and for connected purposes.**

Commencement date:

\_\_\_\_\_2018

MADE by the Maneaba Ni Maungatabu and assented to by the Beretitenti.

## PART I – PRELIMINARY MATTERS

### 1 Short title

This Act may be cited as the Foreign Investment Act, 2018.

### 2. Commencement

This Act commences on a date to be appointed by the Minister by notice.

### 3. Interpretation

In this Act, unless the contrary intention appears—

*“approval”* means approval of an investment proposed by a foreign investor under this Act;

*“business activity”* means any activity carried out in Kiribati —

- (a) that involves the commitment of capital, the expectation of gain or profit and the assumption of risk; and
- (b) that creates a contribution to the economic development of Kiribati,

*“commence”* has the meaning assigned to it under section 18(3);

*“disguised foreign investment”* means a foreigner carrying on business in Kiribati under the guise of a local spouse or being an employee(s) of a local;

*“enterprise”* means any organised business undertaking that is legally established in Kiribati or any state other than Kiribati;

*“expansion of investment”*, for the purposes of the definition of “investment”, includes —

- (a) a major expansion of facilities beyond the original investment plan or size of a pre-existing investment so as to require new approvals under applicable law; and
- (b) an expansion of an investment into new business sectors not included in the original proposal or the previous activities of an investment,

*“fair market value”* means the estimated amount for which a property exchanges on the date of valuation between a willing buyer and a willing seller in an arm’s-length transaction;

*“foreign investor”* means —

- (a) a natural person who is not a citizen of Kiribati that has made or is seeking to make an investment into Kiribati; or
- (b) a company incorporated, registered or constituted in accordance with the laws of —
  - (i) Kiribati; or
  - (ii) any country other than Kiribati, that is not directly or indirectly owned or controlled by a citizen of Kiribati and that has made or is seeking to make an investment into Kiribati,

*“investor”* when used without a reference to foreign or Kiribati citizen, includes both foreign

and Kiribati investors;

*“investment”* means —

- (a) any enterprise —
  - (i) lawfully established, acquired or expanded by an investor in accordance with the laws of Kiribati; or
  - (ii) that carries on a business activity for the purpose of generating revenue in trade, commerce or industry, and includes any trade, profession or calling; or
- (b) any enterprise in Kiribati that an investor is seeking to —
  - (i) establish, acquire, merge with or expand, whether through the constitution, maintenance or acquisition of a juridical person inside Kiribati or outside Kiribati; or
  - (ii) merge with another enterprise inside Kiribati or outside Kiribati.
- (c) It does not include aid and development projects funded by foreign donors, negotiated, arranged or contracted by or through the Government of Kiribati unless the project contractor is, at any time up to the completion of the project, registered by any other circumstances,

*Investment Promotion Division*” means the Kiribati Investment Promotion Division referred to in section 6;

*“Minister”* means the Minister responsible for the administration of this Act;

*“Ministry”* means the Ministry administering investment matters;

*“measure”* means any form of legally binding act of State directly affecting an investor or an investment, and includes any law, regulation, procedure, requirement, judicial decision, binding executive decision and agreement, only if excluded from the scope of this Act;

*“prescribed”* means prescribed by regulation;

*“prohibited list”* means the list of activities in Schedule 3;

*“Registrar”* means an officer appointed under section 6(2) and includes Deputy Registrar, officer or officers appointed under the same section;

*“reserved list”* means the list of activities in Schedule 1;

*“restricted list”* means the list of activities in Schedule 2; and

*“Secretary”* means a Secretary responsible for the administration of this Act.

#### **4. Objects of the Act**

The objects of this Act are —

- (a) to provide a clear and transparent framework for investment in Kiribati;
- (b) to provide for a mechanism for inter-ministerial coordination on regulatory provisions and incentives and support mechanisms for investments;
- (c) to promote sustainable economic development and growth through the mobilization and attraction of domestic and foreign investments that —
  - (i) enhances the economic development objectives of Kiribati to build a prosperous, industrialised society with adequate direct investment to, among other things, encourage the creation of employment, wealth,



technology transfer, capacity building, value addition to natural resources and foreign currency generation;

- (ii) reduces unemployment, poverty and economic inequality in Kiribati;
- (iii) accelerates the growth and diversification of the I-Kiribati economy;
- (iv) facilitates domestic investments, particularly in priority economic sectors; and
- (v) provides for other matters on investment promotion, admission, treatment and management.

## **PART 11 - ADMINISTRATION OF ACT**

### **5. Incentives**

- (1) The Minister may introduce incentives and other support mechanisms —
  - (a) after consultation with the Minister responsible for any specific economic sector; and
  - (b) with the consent of the Minister responsible for finance, where revenue is involved.
- (2) Any incentives introduced shall be consistent with any applicable law as may be required for investments and shall be applicable to all investors, local and foreign, equally and in a non-discriminatory manner.
- (3) Any incentive including grants and loans that are specifically designed or funded for local investors and I-Kiribati shall be exempt from the provisions of subsection (2).

### **6. Administration and implementation of Act**

- (1) A division in the Ministry known as the Investment Promotion Division of Kiribati is established by this section which is responsible for the administration of this Act.
- (2) The Minister may appoint -
  - (a) an officer qualified to occupy the position of a Registrar of Foreign Investment and;
  - (b) one or more officers suitably qualified to occupy the position of -
    - (i) a Deputy Registrar; and
    - (ii) other officer or officerswho are under an Investment Promotion Division and are public civil servants as designated officers to administer and implement the provisions of this Act.
- (3) An Officer or Officers appointed under subsection (2) are subject to the direction of the Secretary when performing their functions.



- (4) The functions of the Registrar appointed under subsection (2) are to -
- (a) receive and consider the applications for investment under this Act;
  - (b) to approve or disapprove applications for investment under this Act in consultation with the Secretary;
  - (c) issue a certificate of approval of investment with conditions as may be prescribed;
  - (d) to keep records of applications and certificate of registrations issued to foreign investors;
  - (e) to assist in implementing this Act by exercising or performing the powers or functions conferred or imposed on him by this Act;
  - (f) to promote both foreign and domestic investment by identifying specific projects and inviting interested investors for participation in those projects;
  - (g) to undertake, in Kiribati and outside Kiribati, promotional activities to attract foreign investments that are beneficial to the economy and development objectives of Kiribati;
  - (h) to provide support services to investors and investments after establishment in order to assist them in their on-going relations with the Government;
  - (i) to assess economic sectors and investment proposals and projects for investment potential, opportunities and social economic impact, including local and public sector participation;
  - (j) to undertake periodic reviews on investment policies and trends in Kiribati and globally in achieving the overall objects of the Act, including the review of levels of domestic and foreign investment in different sectors and the development benefits of these investments;
  - (k) to investigate any breaches under this Act including where local enterprises appears to be a disguised foreign investment and to make recommendations to the Attorney-General when it has reasons to believe that a provision of this Act has been breached;
  - (l) to recommend updates to the Reserved List, Restricted List and Prohibited List at least every three years in consultation with the relevant Government Ministries and the private sector;
  - (m) to review compliance with any approval, registration requirements and conditions by investors and investments;
  - (n) to coordinate the investment related functions of commercial representatives;
  - (o) to award compensation under section 24; and
  - (p) any other matter or matters that the Registrar may require.

- (5) If the Registrar is considering any application or exercising any of its functions under this Act with respect to the Line and Phoenix Islands, he must

(6) The Registrar may, within 2 months after the end of the financial year, make an annual report on the administration of this Act, status of the foreign investment in Kiribati and give a copy of the report to the Minister who shall as soon as practicable lay it before Cabinet.

## **7. Integrated client service facility**

(1) The Registrar may establish and manage within its operations an integrated client service facility for potential investors which may —

- (a) facilitate the sharing of information between the Government, investors and the public;
- (b) facilitate the application and approval process for required permits and licenses in relation to investments; and
- (c) facilitate the timely receipt of Government approvals for permits, registrations, licenses and other documents.

(2) An integrated client service facility may provide a list of various items including licences, permits and approvals issued or made under this Act or any other law which may be applied through the integrated client service facility.

(3) An investor may, among others, apply for a licence, permit or approval of investment through an integrated client service facility.

## **8. Confidentiality**

(1) The Registrar, must not—

- (a) disclose any information that may come into his possession and considered to be confidential;
- (b) use any information in a manner that is inconsistent with the Registrar's duty and responsibility to the Division or duty to a foreign investor to act fairly and impartially; or
- (c) engage in any activity that is inconsistent with the Registrar's appointment as a designated officer of Investment Promotion Division .

# **PART 111 - INVESTORS, ECONOMIC SECTORS AND BUSINESS ACTIVITIES**

## **9. Reserved List**

(1) The business or economic activities listed in Schedule 1 is to be reserved for citizens of Kiribati exclusively, and no approval may be given under this Act, or any other law, for a non-citizen to own or participate in any business or venture that includes any of the activities in the Reserved List.

(2) Nothing in subsection (1) is to prevent a non-citizen from being employed in



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a business provided that he holds the right to employment under the relevant laws in Kiribati.

(3) Regulations may clarify any of the activities referred to in the Reserved List by the inclusion of further description or detail, which is to be treated as to form part of the Schedule.

#### **10. Restricted List**

The foreign investment may carry on the business or economic activities listed in Schedule 2 provided it satisfies the conditions prescribed.

#### **11. Prohibited List**

The business or economic activities listed in Schedule 3 are strictly prohibited.

#### **12. Amendment of schedules**

The Minister, after consultation with Cabinet, may by order amend any or all of the lists in schedule 1, schedule 2 and schedule 3.

#### **13. Treatment of existing investments after reservation of economic sectors and business activities**

(1) A reservation of an economic sector or business activity under Schedule 1 is effective from the date as may be prescribed.

(2) Despite anything to the contrary in this Act, an investor who had lawfully invested in an economic sector or business activity before the sector or activity has been reserved under the Schedule 1 is entitled to maintain his or her investment after the effective date of the reservation of the sector or activity.

### **PART 1V - INVESTMENTS**

#### **14. Application for approval of investments**

(1) A foreign investor must not invest in Kiribati without a valid certificate issued under this Act.

(2) A foreign investor seeking to invest in Kiribati may apply to the Registrar for approval of the proposed investment in the prescribed form and manner and accompanied by a prescribed fee.

(3) The Registrar may consider and determine each application within 30 working days whether to refuse the application or issue a certificate.

(4) If he or she forms the opinion that there are issues concerning the application that requires the expertise advice of the relevant Government Ministries, he or she may seek their expertise advice and for the Government Ministries to respond back within 10 working days.

(5) The Registrar must also consider and determine the application accordingly without responses under subsection (4) only if he or she is able to make an informed decision.

(6) Where the determination of an application is deferred, the Registrar must convey the reasons to the applicant before the expiration of 30 working days under subsection (3).

(7) A certificate issued under this Act is to be endorsed with the list of the prescribed conditions.

(8) Application where the total capital input to the foreign investment is \$250,000 or below may be approved by the Registrar in consultation with the Secretary.

#### **15. Cabinet to approve application**

(1) The Registrar shall submit the application to Cabinet for approval where the total capital input to the foreign investment is more than \$250,000.00.

(2) Upon receipt of the application, Cabinet may -

- (i) approve the application with conditions as may be prescribed considering the recommendations from the Registrar;
- (ii) refuse to approve the application and provide reasons for refusal; or
- (iii) send it back to the Registrar with recommendations for further action as required.

#### **16. Issue or refusal of certificate**

(1) Subject to subsection (2), the Registrar may consider each application.

(2) The Registrar may not issue a certificate in respect of a business activity -

- (a) that is a restricted activity which does not meet the conditions applicable to a business activity; or
- (b) if the applicant has provided false statements; or
- (c) where the applications are incomplete; or
- (d) any other grounds which the Registrar considers necessary.



(3) The Registrar must inform an unsuccessful applicant in writing of the grounds upon which his application has been refused and inform the applicant his right of appeal under section 28.

## **17. Certificate**

- (1) A Foreign Investment Certificate signed by the Secretary shall—
- (a) be in the prescribed form;
  - (b) set out the name of the foreign investor and the nature of the activity in respect of which the certificate is granted; and
  - (c) if the certificate is granted in respect of a restricted activity, specify any conditions as may be prescribed relating to the carrying on of business in that activity.

## **18. Duration of certificate**

- (1) Subject to section 19, a certificate is valid from the date of its issue until the termination of the business activity for which it was issued.
- (2) A certificate is cease to be valid if the business activity for which it is issued does not commence within 1 year of the date of issue.
- (3) For subsection (2), **commence** business means conducting activities appropriate to the carrying out of the particular business.

## **19. Cancellation of certificate**

- (1) A certificate may be cancelled by the Registrar if —
- (a) the application contains any material misrepresentation or false statement;
  - (b) the foreign investor carries on a prohibited activity or a restricted activity; or
  - (c) any prescribed conditions are breached; or
  - (d) if a foreign investor commits an offence under this Act.

## **20. Holder to be heard**

No certificate under this Act shall be cancelled without the certificate holder first having been given an opportunity to be heard by the Registrar.

## **PART V - RIGHTS AND OBLIGATIONS OF INVESTORS**

### **21. Compliance with all applicable laws**

An investor must carry out their activities at all times in full compliance with all the applicable laws of Kiribati.

### **22. National Treatment**

(1) During implementation of investment and entrepreneurial activities, rights and guarantees of foreign investors may not be less than rights and guarantees enjoyed by natural and legal persons of Kiribati, except for cases defined by legislation relevant to international obligations.

(2) The rights and guarantees referred to in subsection (1) include treatment in relation to the establishment, expansion and operation of their investments.

### **23. Expropriation**

Any investments in Kiribati shall not be nationalised, expropriated or subjected to any indirect measures having an equivalent effect, except by provision of a law, in the public interest, for a public purpose, on a non-discriminatory basis, taken in accordance with applicable requirements and procedures and accompanied by prompt and full compensation.

### **24. Payment of compensation**

(1) Unless provided for in other laws of Kiribati, the just compensation required for an expropriation of investment is subject to subsection (2), once it is determined it is—

- (a) normally assessed in relation to the fair market value of the expropriated investment immediately before the expropriation took place; and
- (b) paid promptly in a freely convertible currency.

(2) The just compensation is based on an equitable balance between the public interest and the interest of those affected having regard to all relevant circumstances, including the —

- (a) fair market value;
- (b) profit of the investment to date of the expropriation;
- (c) capital costs of the investment;
- (d) current and past use of the property;
- (e) history of its acquisition;

- (f) purpose of the expropriation; and
  - (g) duration of the investment.
- (3) The assessment of fair market value may not reject any change in value occurring because the intended expropriation had become known earlier.
- (4) Compensation must include simple interest as may be prescribed —
- (a) commencing on the date the act of expropriation occurs; and
  - (b) ending on the date the whole compensation amount is paid.

## **25. Right of review concerning expropriation and compensation**

An investor affected by a nationalisation or expropriation may seek constitutional or other remedies under the laws of Kiribati, or resort to other methods of resolution of disputes provided for in any agreement between the investor and the Government.

## **26. Transfer of funds**

- (1) A foreign investor may transfer into and outside Kiribati funds relating to his or her investment subject to the laws of Kiribati.
- (2) The funds referred to in subsection (1), include —
- (a) the initial capital and additional amounts to maintain or increase the investment;
  - (b) the profits, dividends, royalties and income yielded by an investment;
  - (c) the funds in repayment of loans and interests of loans related to an investment;
  - (d) the compensation paid under this Act;
  - (e) proceeds from the total or partial sale or liquidation of an investment;
  - (f) earnings and other remuneration of personnel engaged from abroad in connection with an investment; and
  - (g) payments arising out of the settlement of a dispute between the investor and another party in Kiribati.
- (3) Despite subsection (1), the Government may delay or prevent a transfer and any affected person may seek any redress through the judicial process, or through a fair, non-discriminatory and good faith application of measures, to delay or prevent a transfer—
- (a) to protect the rights of the creditors in the event of actual or anticipated bankruptcy;
  - (b) to ensure the compliance with judgments concerning criminal offences;
  - (c) to ensure the compliance with tax obligations;
  - (d) to ensure compliance with social security, public retirement, or



- compulsory savings schemes and severance entitlements of employees;
- (e) to comply with lawful administrative decisions and facilitate execution of judicial judgments;
  - (f) in response to serious or exceptional balance of payments or external financial difficulties, or the anticipated financial risk; or
  - (g) in exceptional circumstances, to prevent movements of capital that causes or threaten to cause serious difficulties for macroeconomic management, including monetary or exchange rate policies.

## **PART VI - APPEAL**

### **27. Investment Appeal Panel**

- (1) An Investment Appeal Panel is established by this section.
- (2) The Investment Appeal Panel shall consist of the following members—
  - (a) a Chairperson;
  - (b) a person who is qualified as a lawyer;
  - (c) a representative of the private sector; and
  - (d) a representative of a non-government organisation, who shall be appointed by notice by the Minister.
- (3) The Minister may appoint members of the Investment Appeal Panel on terms and conditions to be prescribed.
- (4) The Chairperson and other members of the Investment Appeal Panel shall hold office for three years and be eligible for re-appointment.
- (5) The Minister may at any time terminate the appointment of a member who has been found guilty of—
  - (a) any misconduct, default or breach of trust in the discharge of that member's duties; or
  - (b) an offence of a nature as renders it desirable that the member's appointment be terminated.
- (6) The Investment Appeal Panel may appoint as advisor for a specific appeal a person whose specialised knowledge or experience is that the person must be able to assist the Investment Appeal Panel in its deliberations.
- (7) Allowance and expenses of members of the Investment Appeal Panel incurred by them in respect of their duties may be paid out of the Consolidated Fund at a rate as the Minister may from time to time prescribe.
- (8) If a member of the Investment Appeal Panel has any pecuniary interest whether it be direct or indirect and is present at a meeting, shall as soon as practicable before



the commencement of the meeting, disclose to the member the fact and nature of his interest, and shall not take part in the consideration or discussion of the appeal.

(9) The Investment Appeal Panel may conduct its own proceedings according to its own rules as may be prescribed by regulation.

## **28. Right of appeal**

(1) An investor who is dissatisfied with the decision of the Registrar may apply to the Investment Appeal Panel for –

- (a) a review of a decision of the Registrar with regard to that investor's investment or proposed investment; or
- (b) an order where the Registrar does not issue a decision within the required time limit.

(2) An application for review under subsection (1) must—

- (a) be in writing;
- (b) specify the reasons for making the application; and
- (c) be made within three months from the date of the decision.

(3) An applicant for a review under subsection (1) must pay a sum as may be prescribed, which may be forfeited if it is determined that the application was frivolous.

(4) If an application for a review is made under this section, the decision of the Registrar is suspended until the appeal is heard and determined by the Investment Appeal Panel.

(5) The Investment Appeal Panel is to make a decision under this section within 14 working days of the date of submission of an application for review under subsection (2).

(6) The Investment Appeal Panel may dismiss an application for review where it considers:

- (a) the application is vexatious; or
- (b) that there are no reasonable prospects of making a decision.

(7) The Investment Appeal Panel may, if it determines that there is a merit in it, order one or more of the following remedies—

- (a) recommend the annulment in whole or in part of any unauthorised act or decision, or remedying of any omission, of the Registrar;
- (b) recommend a re-evaluation of an application, specifying the grounds for a recommendation.

(8) The Investment Appeal Panel must provide to the Applicant and publish written reasons for its decisions.

- (9) A person dissatisfied with a decision of the Investment Appeal Panel may appeal against the decision to the High Court.

## **PART VII – MISCELLANEOUS PROVISIONS**

### **29. Offences**

- (1) A foreign investor commits an offence, if he —
- (a) undertakes, establishes or operates an investment without a valid certificate of registration issued under section 14 or 15;
  - (b) invests in a sector in which an investment is not permitted;
  - (c) changes the nature of the investment in a manner that makes it materially different from the approved investment; or
  - (d) is in breach of any prescribed conditions of his licence.
- (2) A foreign investor commits an offence, if he submits information which the investor —
- (a) knows to be false, misleading or fraudulent; or
  - (b) does not believe to be true, in relation to any matter required under this Act.
- (3) A foreign investor commits an offence, if he—
- (a) changes the ownership or control of his or her investment; or
  - (b) transfers any licence, authorisation or concession owned by the investor or investment to another foreign investor.
- (4) A foreign investor who commits an offence under this Act is liable on conviction to a fine of up to \$50,000.00 or imprisonment for a period of up to 10 years or to both.

### **30. Electronic Documents**

- (1) Any provision under this Act or regulations made under it that —
- (a) requires the filing of documents, or obtaining of information in any form;
  - (b) requires that documents be created or retained;
  - (c) requires documents, records or information to be provided or retained in their original form;
  - (d) issues any permit, licence or approval; or
  - (e) requires payment of any fee, charge or other amount by any method and manner of payment, may be carried out by means of electronic records or in electronic form.
- (2) If the Registrar decides to perform any of the functions under this Act by means of electronic records or in electronic form, the Registrar may specify —



- (a) the manner and format in which such electronic records shall be filed, created, retained, issued or provided;
- (b) where electronic records have to be signed, the type of electronic signature required;
- (c) the manner and format in which such signature shall be affixed to the electronic record, and the identity of or criteria that shall be met by any specified security procedure provider used by the person filing the document;
- (d) such control processes and procedures as may be appropriate to ensure adequate integrity, security and confidentiality of electronic records or payments; and
- (e) any other required attributes for electronic records or payments that are currently specified for corresponding paper documents.

### **31. Regulations**

- (1) The Minister may make regulations relating to –
  - (a) the form of any application, notice, certificate and other document required for the purposes of this Act and the manner for making the application;
  - (b) the organisation, operations and proceedings of a body that may be established under this Act to perform any functions in terms of this Act or as may be delegated to it;
  - (c) any fees to be paid for services provided under this Act;
  - (d) the facilitation of domestic investment in priority economic sectors;
  - (e) the provision of incentives and support mechanisms to investors;
  - (f) any matter which in terms of this Act is required or permitted to be prescribed; and
  - (g) any matter in respect of which the Minister considers necessary or expedient to prescribe in order to achieve the objects of this Act,

### **32. Repeal of laws**

The Foreign Investment Act, 1985 and the Protected Industries Ordinance are repealed.

### **33. Savings**

- (1) Despite the repeal of the Foreign Investment Act, 1985 and subject to this Act, any investment contract or permit executed under it and in force at the date of commencement of this Act continues to be in force as if it has been made under this Act.
- (2) Anything done under a provision of the repealed Foreign Investment Act, and that could have been done under this Act is deemed to have been done under a corresponding provision of this Act.

## SCHEDULE 2

### RESTRICTED LIST

#### Economic Sector

#### Manufacturing

#### Economic Sub Sector

Salt

#### Conditions

Foreign Investor must establish a joint venture with a local partner

Coconut Virgin Coconut Oil

Foreign Investor must establish a joint venture with a local partner

#### Services

Refuse Disposal Services for recyclable items excluding PET 14 ,Lead acid batteries and aluminium cans

Services must be supplied through a commercial presence except as regards to consulting

Maritime Services

(a) Liner shipping:

Conditional on the granting of a license, the issuance of which is based on such criteria as the frequency, type, and price of the services proposed, as well as the impact on the services provided by other transporters.

- Licenses granted preferably to carriers owned by Kiribati citizens, and that employ Kiribati citizens, and that conduct training for Kiribati citizens. - Vessels owned and operated by the Kiribati government do not require a license to be granted on the basis of the criteria mentioned above.

-Local agent in Kiribati required.

(b) Bulk, tramp, and other international shipping, including passenger transportation.

Maritime Agency Services

Local agent in Kiribati required

aluminium

Suppliers of maritime transport services are required to go through a local agent established in Kiribati



## SCHEDULE 3

### PROHIBITED SECTORS

#### General

Development, production, distribution of nuclear ,bacteriological and chemical weapons  
Construction of polygons for testing nuclear ,bacteriological and chemical weapons;  
Import of nuclear and hazardous waste from foreign countries for recovery and disposal  
Research works related to human cloning  
Production of narcotic drugs  
Exploitation of wildlife conserved bird species  
Activities prohibited by international agreements of Kiribati.

#### Fishing

Fishing in Conserved areas  
Wild Coral Exportation  
Turtle hunting  
Wild Giant clam harvesting  
Berried female & lobster harvesting  
Fishing for endangered and marine protected species  
Shark

#### Agriculture

Millionaire salad exportation  
Coconut crab harvesting  
Logging Coconut bearing trees

## EXPLANATORY MEMORANDUM

The Purposes of the Act are:

To provide for the promotion of sustainable economic development and growth through the mobilisation and attraction of foreign and domestic investment to enhance economic development, reduce unemployment, accelerate growth and diversify the economy; to provide for reservation of certain economic sectors and business activities to certain categories of investors; to provide for dispute resolution mechanisms involving investment; and to provide for incidental matters.

**Part 1** of the Act comprises the preliminary clauses and contains 4 clauses.

Clause 1 of the Act provides the short title of the proposed legislation.

Clause 2 of the Act provides for the commencement date to be appointed by the Minister.

Clause 3 sets out important definitions, including 'business activity', 'foreign investor', 'investor' and 'investment'.

Clause 4 sets out the Objects of the Act,

**Part II** of the Act deals with the Administration of the Act.

Clause 5 deals with incentives where it shall be applicable to all investors both local and foreign and shall be dealt with in a non-discriminatory manner.

Clause 6 provides for the establishment of the Investment Promotion Division of Kiribati responsible for the Administration of the Act. The Registrar who is under this Division must be appointed to carry out his functions one of which is to receive and consider the applications for investment under this Act.

Clause 7 deals with integrated client service facility where an investor may apply for a licence, permit or approval of an investment.

Clause 8 deals with confidentiality where the Registrar of the Investment Promotion Division must not disclose information.

**Part III** deals with investors, economic sectors and business activities.

Clause 9 deals with reserved list where a non-citizen may not own any business that is included in the reserved list.

Clause 10 states that the foreign investment may carry on the business or economic activities listed in schedule 2 provided conditions prescribed by regulations are satisfied.

Clause 11 states that the business or economic activities listed in Schedule 3 are strictly prohibited.

Clause 12 sets out the power of the Minister to amend the schedules by order.

Clause 13 deals with treatment of existing investments after reservation of economic sectors and business activities.

#### **PART IV deals with Investments.**

Clause 14 and 15 set out the application for approval of investments in the prescribed form and manner.

Clause 16, 17, 18, 19 and 20 provide for the issuing, refusal, contents and duration of a certificate, cancellation of certificate and holder to be heard before cancellation of his licence.

#### **Part V provides for the Rights and Obligations of Investors-**

Clause 21 states that all investors must fully comply with all the applicable laws of Kiribati.

Clause 22 provides for national treatment where the rights of foreign investors may not be less than rights and guarantees of natural and legal persons of Kiribati.

Clause 23 deals with expropriation. It states that any investments in Kiribati shall not be nationalised or expropriated except by provision of a law in the public interest.

Clause 24 provides for payment of compensation for an expropriation of an investment.

Clause 25 deals with right of review concerning expropriation and compensation.

Clause 26 deals with the transfer of funds.

#### **Part VI deals with Appeal.**

Clause 27 states that an Investment Appeal panel shall be established with a Chairperson and a person who is qualified as a lawyer, private sector and a non-governmental organisation.

Clause 28 provides for the Right of Appeal where an aggrieved investor shall apply in writing to the Investment Appeal Panel for a review, failing which they may apply to the Court.

#### **Part VII deals with miscellaneous provisions.**

Clause 29 deals with offences which are outlined in this clause and including fines.

Clause 30 makes provision for the carrying out of the functions under this Act electronically.

Clause 31 deals with Regulations making powers of the Minister

Clause 32 states that The Foreign Investment Act, 1985 and the Protected Industries Ordinance are repealed.

Clause 33 deals with transitional provisions where it is stated that despite the repeal of The Foreign Investment Act, 1985, any investment contract or permit executed therein and in force will continue in force.

**Honourable Mr Atarake Nataara**  
Minister of Commerce, Industry and Co-operatives



**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Foreign Investment Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 22<sup>nd</sup> November 2018 and is found by me to be a true and correctly printed copy of the said Bill.

  
**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this ..... day of ..... 2018.

  
**Eni Tekanene**  
 **Clerk of the Maneaba ni Maungatabu**



REPUBLIC OF KIRIBATI  
(No. 2 of 2018)



I assent

Beretitenti

13/10/2018.

An Act  
Entitled

**AN ACT TO AMEND THE LOCAL GOVERNMENT ACT 1984**

Commencement:  
2018

MADE by the Maneaba ni Maungatabu and assented to by Te Beretitenti.

**Short title**

1. This Act may be cited as the Local Government (Amendment) Act 2018

**Meaning of 'principal Act'**

2. In this Act the 'principal act' means the Local Government Act 1984

**Amendment of section 2**

3. Section 2 of the principal Act is amended by inserting between the definition of elected member' and definition of elected member' and definition of 'mayor' the following –

“Financial Year’ means from 1<sup>st</sup> January to 31<sup>st</sup> December”

**Amended of Section 11**

4. Section 11 of the principle Act is amended as follows:
  - i) By repealing paragraphs ( c) and (d) of subsection (2) and substituting the following paragraph –  
“(c) he is a public”

“(d) he is appointed to, or to act in, in any office or place of profit in the gift or disposal of the council or a board,”

- ii) By inserting the following paragraph immediately after paragraph (f)  
“(g) if he becomes a member of the Maneaba ni Maungatabu”

#### **Amendment of Section 12**

- 5. Section 12 of the principle Act is amended by inserting the words “ and after consulting with the nominating body” between the word “ resolution” and “or” at the third last line of subsection (1)

#### **Amendment of Section 15**

- 6. Section 15 of the principle Act is amended at subsection (9) by inserting immediately after paragraph (c) the following new paragraph –

(d) if he becomes a member of the Maneaba ni Maungatabu.

#### **Amendment of Section 16A**

- 7. Section 16A of the principle Act is amended at subsection (2) (a) by deleting the words ‘18 months’ between the words ‘of’ and ‘commencing’ and substituting the words ‘6 months’.

#### **Amendment of Section 17A**

- 8. Section 17A of the principle Act is amended as follows:

- i) At subsection (2) by inserting-
  - a) The words “out-going Mayor or his absence the Vice Mayor and the” between the word “the” and “clerk”; and
  - b) The word “or making new policies” immediately after the full stop
- ii) By adding after subsection (2) the new subsection (3) as follows –  
“(3) Both the outgoing Mayor or in his absence the Vice Mayor and the clerk shall exercise such power until such time new Mayor is elected”

#### **Amendment of section 20**

- 9. Section 20 of the principle Act is amended as follow –

- i) by inserting the words “subject to the existing standing orders for meetings made pursuant to section 19 and section 29” immediately at the beginning of subsection (1); and
- ii) by inserting the words “and any other meetings”, between the word ‘meeting’ and ‘at’ at the second line of the paragraph.

### **Amendment of Section 26**

10. Section 26 of the principal Act is Amended at subsection (1) by inserting the words “or in any other means to be determined and approved by the council” between the word “purpose” and “and”.

### **Amendment of Section 59**

11. Section 59 of the principle Act is amended by repealing the whole section and substituting the following –

“Subject to the provisions of the Money Lending Act 1988, a council may from time to time, in accordance with the resolution of the council in that behalf, lend money within Kiribati of such amounts, from such sources, in such manner, for such purposes and upon such conditions as the council may impose”.



# LOCAL GOVERNMENT AMENDMENT ACT 2018

## Explanatory Memorandum

The principle object of this short Act is to amend the Local Government Act 1984 (hereinafter referred to as the principle Act) so as to respond to the current loopholes of the law to align with the recent development in the operation and management of Councils.

Section 3 of this Act amends section 2 of the principal Act by introducing the new definition of “financial year” which to cover a period from 1<sup>st</sup> January to 31<sup>st</sup> December. The definition is required so the implementation of part VII, in particular section 62, of the principal Act is easy and understandable.

Section 4 amend section 11 (2) of the principal Act so that the seats of an elected member becomes vacant when a member of a council is also public officer. The purpose is to stop and avoid the situation where a person having a double salaries or having hold two employment at a time – being a counselor and a public officer at the same time. An elected member should also vacant his seat when he became a member of the Maneaba ni Maungatabu.

Section 5 amends section 12 of the principle Act so that the seats of an elected member becomes vacant when a member of a council is also public officer. The purpose is to stop and avoid the situation where a person having a double salaries or having hold two employments at a time – being a counselor and a public officer at the same time. An elected member should also vacant his seat when he became a member of the Maneaba ni Maungatabu.

Section 6 also amends section 15 of the principle Act by adding more to the list of grounds of which the Mayor shall cease to be a mayor. With this amendment it is now a requirement that the Mayor shall cease to be a Mayor as soon as he is declared to be an elected member to the Maneaba ni Maungatabu.

Section 7 amends section 16A to shorten the period of which a motion of no confidence against the Mayor may be moved. Previously in the principle Act a motion shall not be moved during a period of 18 months commencing on the day the mayor resume office. That 18 month is now change to 6 months.

The purpose of the amendment in section 8 of the Act is to allow the outgoing Mayor or his Vice Mayor to continue working and overseeing the operation of the council after the Council stand dissolved until such new Council and new mayor is elected.

Section 20 of the principle Act is also amended by section 9 of this Act by inserting the words “Subject to the existing standing orders” and any other meeting” so that the Mayor, before exercising his power to convene a meeting, should also take into consideration the existing standing orders as well.

Section 10 amend section 26 of the principal Act by allowing other means of recording other than the book recording to be used by the council for the purpose of recording of minutes.



Lastly, to comply with the current laws on money lending, Section 59 is amended by section 113 of this Act so that the Council shall recognize the existence of the Money lending Act and that the Council shall comply accordingly.

**Hon. Kobebe Taitai**  
Minister of Internal Affairs  
December 2017

#### LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act

**Mrs. Tetiro Maate Semilota**  
Attorney-General  
December 2017

**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Local Government (Amendment) Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 23<sup>rd</sup> April 2018 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this ...13... day of  
.....October..... 2018.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**



REPUBLIC OF KIRIBATI  
(No.4 of 2018)

I assent,

Beretitenti  
13/10/ 2018

**AN ACT TO AMEND THE OCCUPATIONAL HEALTH AND SAFETY ACT 2015**

Commencement:  
13/10/ 2018

**1. Short Title**

This Act may be cited as the Occupational Health and Safety (Amendment) Act 2018

**2. Meaning of 'principal Act'**

In this Act principal Act means the *Occupational Health and Safety Act 2015*

**3. Insertion of new definitions in Section 2**

Section 2 of the principal Act is amended as follows:-

(a) by inserting a new definition immediately before "employee" as follows:-

"dangerous incident" means a workplace incident that exposes an employee or any other person to a serious risk to a person's health and safety emanating from an immediate or exposure to the following:-

- (a) an uncontrolled escape, spillage or leakage of a substance; or
- (b) an uncontrolled implosion, explosion or fire; or
- (c) an uncontrolled escape of gas or steam; or
- (d) the fall or release from a height of any plant, substance or thing; or
- (e) the collapse or partial collapse of a structure; or
- (f) the collapse or failure of an excavation or of any shoring supporting an excavation; or
- (g) the interruption of the main system of ventilation in an underground excavation or confined space; or
- (h) the failure of a breathing apparatus; or
- (i) any other event prescribed by regulations.

(b) by repealing the definition of "employer" and substituting the following:-

"employer" means a person, company or entity who or which -

- (a) employs one or more other persons under contracts of employment or contracts of training; or
- (b) has the management and control of a workplace; or
- (c) conducts or carries out a business or undertaking.



(c) by inserting new definitions immediately before "plant" as follows:-  
"inspector" means a person appointed under section 8 of this Act;

"occupational disease" includes a physical or mental ailment disorder, defect, condition or chronic ailment that occurs as a result of exposure to a workplace hazard, whether of sudden or gradual development and whether contracted before or after the commencement of this Act;

(d) by inserting a new definition immediately before "supply" as follows:-  
"supervisor" means any person appointed by the employer to report on health and safety compliance issues within the workplace;

#### **4. Amendment of section 8**

Section 8 of the principal Act is amended by repealing it and substituting the following:-  
"The Minister may appoint an officer to be an inspector for the purposes of this Act".

#### **5. Insertion of section 9(2)(i) and (j)**

Section 9 of the principal Act is amended by inserting section 9(2)(i) and (j) immediately after section 9(2)(h) as follows:-

"9(2) An inspector may, for the purpose of the execution of this Act-

- (i) issue an infringement notice in the prescribed form;
- (j) facilitate the monitoring, collecting and analysing of national data on compensable injuries, occupational accidents and diseases or other relevant data in Kiribati for the purposes of reviewing the effectiveness of implemented policies and standards, recommending appropriate priorities and facilitating the production of annual statistics on occupational accidents and diseases:".

#### **6. Amendment of section 20**

Section 20 of the principal Act is amended by repealing it and substituting the following:-  
"Right of employee to remove himself from risky situations

20(1) An employee has the right to:-

- (a) inform a person who is a supervisor or manager or responsible for health and safety compliance within the workplace and the workplace's health and safety representative if the employee has reasonable cause to believe that there is an immediate or imminent risk of harm to himself or herself or any person in the workplace;
- (b) cease or refuse to carry out works or remove himself or herself from a work situation which he or she has reasonable justification to believe presents an immediate or imminent risk of serious harm;
- (c) if the employee chooses (a), then he or she has to take the prescribed steps stated in (2), (3), (4) and (5) and if the employee chooses (b) then he or she has to follow prescribed steps stated in (6).

(2) Where a Supervisor has been advised of a hazard and risk of serious harm, the Supervisor shall take such action as he or she considers appropriate to either remove the hazard or reduce the risk of harm to as low as reasonably practicable;

(3) The parties must make reasonable effort to achieve a timely, final and effective resolution

of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default Issue Resolution Procedure prescribed in the regulations;

- (4) If an issue has not been resolved a party to the issue may refer the matter to an inspector for investigation and assistance;
- (5) An inspector, as soon as possible after a request is made, shall carry out an investigation of the issue and shall make such decisions and exercise such powers under this Act, as the inspector considers necessary, in relation to the issue or work;
- (6) An employee or any person in the workplace who ceases work under this section:-
  - (a) must as soon as practicable, notify the employer that the employee or any person in the workplace has ceased work under this section;
  - (b) shall be protected from undue consequences, in accordance with national conditions of service and employment contracts;
  - (c) cannot be required to return to a work situation where there is a continuing immediate or imminent risk of serious harm until the employer has taken remedial action, if necessary."

## **7. Amendment of section 22**

Section 22 of the principal Act is amended by repealing section 22(1) and substituting the following:-

- "22(1) An employer shall ensure that the Secretary of the Ministry responsible for the administration of this Act is immediately notified of:-
- (a) an accident, serious injury, work-related illness or occupational disease of an employee, at a workplace under his or her management that resulted in serious harm; or
  - (b) a dangerous incident:"

## **8. Amendment of the title in Part VI**

Part VI of the principal Act is amended by inserting at the title the word, "INFRINGEMENT" between the words, "IMPROVEMENT" and "PROHIBITION" and it shall read as follows:-

"IMPROVEMENT, INFRINGEMENT AND PROHIBITION NOTICES"

## **9. Insertion of new section 25A**

### **Inspector may issue infringement notice**

Section 25A is inserted immediately after section 25 of the principal Act as follows:-

- "25A(1) An inspector may serve an infringement notice on a person if it appears on reasonable grounds to the inspector that the person has committed an offence prescribed by the regulations;
- (2) An infringement notice must be issued in the form prescribed by regulation;
  - (3) If the person served does not contest the notice or wish to have the matter dealt with by a court, the person may pay, within the time frame specified in the notice, the penalty prescribed by the regulations for the offence;
  - (4) If the amount of the penalty prescribed for an alleged offence is paid under this section no person is liable to any further proceedings under this Act for the alleged offence;
  - (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence;
  - (6) The regulations may;
    - (a) prescribe an offence for the purposes of this section by specifying the offence or by



- referring to the provision creating the offence; and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
  - (c) prescribe different amounts of penalties for different offences or classes of offences
- (7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court;
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences;

#### **10. Amendment of section 29**

Section 29 of the principal Act is amended as follows:

- (a) at the title of this section by repealing the words "Minister" and substituting it with the words "Secretary";
- (b) in subsection (1) by repealing it and substituting the following:-  
"29(1) A person issued with an improvement notice or an infringement notice or prohibition notice by an inspector may, within seven days of the date of issue of the notice, apply to the Secretary for a review of that notice";
- (c) in subsection (3)(a) by inserting the words "or infringement notice" immediately after the words "notice" and before the comma;
- (d) in subsection (4)(a) by repealing it and substituting the following:-  
"29(4)(a) the Secretary affirms an improvement notice or an infringement notice or a prohibition notice or affirms such a notice with modifications; and".

#### **11. Amendment of section 30**

Section 30 of the principal Act is amended as follows:-

- (a) in subsection (1) by repealing it and substituting the following:-  
"30(1) A person issued with an improvement notice or an infringement notice or prohibition notice which has been subject to review under section 29 may, within 30 days of the date of the service of the Secretary's decision, appeal to the High Court against the Secretary's decision;
- (b) in subsection (3)(a) by inserting the words "or infringement notice" immediately after the words "notice" and before the comma;
- (c) in subsection (4)(a) by repealing it and substituting the following:-  
"30(4)(a) the Court affirms an improvement notice or an infringement notice or a prohibition notice or affirms such a notice with modifications; and".

#### **12. Amendment of section 33**

Section 33(1) of the principal Act is amended by repealing the word, "Beretitenti" and substituting it with the word, "Minister".

#### **13. Amendment of section 34**

Section 34 of the principal is amended by repealing it and substituting the following:-

- "34(1) A person who commits an offence against this Act is liable to a penalty-
- (a) in the case of a body corporate to a fine of \$10,000; or
  - (b) in any other case to a fine of \$2,000; and



(c) imprisonment for 1 year or to both.

- (2) The whole or part of any penalty or fine paid under an infringement notice may be applied for the benefit of a person who has been injured or died pursuant to a serious breach of this Act or regulations or his or her family or otherwise, as the court may determine.
- (3) An employer who commits a second or subsequent breach or offence under this Act or regulations which comprises a repetition or omission of a previous offence, may be liable for an additional penalty or fine as prescribed in the regulation".

## EXPLANATORY MEMORANDUM

This Act amends the Occupational Health and Safety Act of 2015 (Principal Act) to better implement the obligations provided under the Principal Act and ensure that occupational health and safety in the workplace is prioritised by the different sectors (workers, employers and the government) involved. Following the Tripartite consultation in March 2017, the Ministry responsible for labour found that the Principal Act did not provide clearly and sufficiently for enforcement mechanisms hence this amendment to address issues such as providing the powers of Occupational Health and Safety Inspectors to serve notices.

This Act amends section 2 of the Principal Act to insert definitions of dangerous incidents and occupational disease as currently only accidents that cause or result in serious harm are reported without provision for harms such as those that may be from occupational disease. The amendment is now recognising that occupational disease should also be reported as one of the cause of harm covered under the Act. It is recommended that a “dangerous incident” and “occupational disease” should also be reported to the Ministry. Another definition added is for Inspectors and Supervisors and the roles and responsibilities that these officers should have in relation to occupational health and safety issues. More duties and powers are further added with the amendment of section 9 to include duties and powers of the Inspectors that have not been provided for in the Principal Act.

Another amendment is on section 8 to repeal the word “Beretitenti” and substitute with the word the “Minister”. This is to avoid imposing the role on the Beretitenti which could otherwise be carried out by the Minister responsible for labour in line with the Ministry’s portfolio.

Since section 20 of the Principal Act only provide a general provision on the rights of employees to remove himself/herself from situations that he/she believes to be risky; this section is amended by repealing the whole section and substituting it with a broader and specific provision that emphasised employees’ rights to avoid eminent and risky situations. The amendment inserts a longer and inclusive provision on this issue by adding the procedures and steps that employees should do when they are of the view that their work or workplace poses a danger or risk to them. This amendment adds another prevention measure in the Act.

Following the amendments to section 2, section 22 is broadened to include incidents raging from serious accidents, illness, disease and dangerous incident. This broader provision will cover actual and potential incidents as well as the extent of causes and effect whether it is serious, dangerous or occupational. This amendment will also add measures for prevention and reduction of risk from incidents or accidents, in addition to the real causes or actual occurrences.

The Principal Act is also amended by inserting the word “INFRINGEMENT” at the title of Part IV under the notices. This will add a third notice (infringement) to the improvement notice and prohibition notice. The inspectors may now serve and impose an infringement notice to enforce a penalty for breaching of the Act and any other conditions imposed in relation to occupational health and safety under the Act or Regulation. To support this provision, sections 29 and 30 (right of appeal) are amended to provide that an infringement notice cannot be appealed to the Minister or High Court where the offence relates to an infringement offence. However, these amendments still accommodate the right of the employer to dispute the infringement notice by providing that in the event of dispute, the employer will have the opportunity to make submissions and dispute the commission of the offence (infringement) and fine imposed during the prosecution process.

As recommended from the Tripartite consultation, the penalties in the Principal Act are amended by increasing the fines. By comparison, other jurisdictions are imposing higher penalties than the rate imposed in the Principal Act. The seriousness and cruciality of health and safety of workers in the workplace should be reflected with higher penalties. For this, the Principal Act is amended by increasing the penalty for breaches of the Act by companies from \$5,000 to \$10,000.

Honourable Ioteba Redfern  
Minister for Labour and Human Resources Development

#### LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act conflicts with the Constitution and the Beretitenti may properly assent to the Act.

Mrs Tetiro Maate Semilota  
Attorney General



## **CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU**

This printed impression of the Occupational Health and Safety (Amendment) Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 26th April 2018 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this .....<sup>13</sup> day of  
.....<sup>October</sup> 2018.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**



**REPUBLIC OF KIRIBATI**  
(No.1 of 2018)

I assent.

Beretitenti

13/10/18

**AN ACT**  
entitled

An Act to protect public health by providing for the establishment of the Medicines and Therapeutics Committee and for the effective regulation of medicines in Kiribati to ensure their quality, safety and efficacy.

Commencement:

2018

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PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the Medicines Act 2018.

2. Commencement

This Act comes into force on a date appointed by notice by the Minister.

3. Act binds Government

This Act binds the Republic.

4. Definition

In this Act, unless the context otherwise requires -

**‘administer’** means administer to a human being, either orally or by injection or by introduction into the body in any other way; or by external application, whether by direct contact with the body or not;

**‘advertisement’** means any words, whether written, printed, or spoken, and any pictorial representation or design, used or appearing to be used to promote the sale of medicines or the use of any method of treatment; and advertises has a corresponding meaning;

**‘animal health officer’** means an officer responsible for veterinary services within the ministry responsible for the administration of environment, lands and agricultural development;

**‘authorised officer’** means a Committee member or a person appointed by the Committee to be an authorised officer under section 9;

**‘automatic vending machine’** means any machine or mechanical device used or capable of being used for the purpose of selling or supplying goods without the personal manipulation or attention of the seller or supplier, or employee or other agent at the time of sale or supply;

**‘Chief Pharmacist’** means the Chief Pharmacist of the ministry responsible for the administration of health and medical services, or any person acting for the time being in such position;

**‘clinical trial’** means any research study that prospectively assigns human participants or groups of humans to one or more health-related interventions to evaluate the effects on health outcomes;

**‘Committee’** means the Medicine and Therapeutics Committee established by this Act;

**‘court’** means the Magistrate’s Court and the High Court;

**‘counterfeit’** in relation to medicines or starting materials, means a medicine or substance which is deliberately and fraudulently mislabelled with respect to identity or source;

**‘dentist’** means a person who is duly registered as such under the *Medical Services Act* 1996;

**‘dispensing’** means the preparation of a medicine for sale to the public and the packaging, labelling, recording, and supply of that medicine;

**‘health professional’** means a medical practitioner and includes persons who are ‘registered persons’ under section 2 of the *Medical Services Act* 1996;



**'importer'** means any person by or for whom any goods are imported; and includes the consignee of any goods; and also includes any person who is or becomes —

- a. the owner of any goods; or
- b. entitled to the possession of any goods; or
- c. beneficially interested in any goods

on or at any time after the importation of those goods and before they have ceased to be subject to the control of Customs in accordance with the *Customs Act 2005*;

**'label'** in relation to a container of a medicine, means any written, pictorial, or other descriptive matter marked on or affixed to the container; and labelled has a corresponding meaning;

**'licence'** means a licence issued under this Act; and licensed and licensee have corresponding meanings;

**'manufacture'** in relation to a medicine, includes any process carried out in the course of making the product;

**'medical assistant'** means a person who is duly registered as such under the *Medical Services Act 1996*;

**'medical practitioner'** means a person who is duly registered as such under the *Medical Services Act 1996*;

**'medicine'** means any substance whether of animal, plant or synthetic origin (not being a medicinal device) which is used internally or externally in humans or animals for a medicinal purpose, including —

- a. preventing, diagnosing, curing or alleviating disease, ailment, defect or injury;
- b. influencing, modifying or inhibiting of physiological processes;
- c. testing susceptibility to a disease or ailment;
- d. influencing, controlling or preventing conception;
- e. testing for pregnancy; or
- f. the replacement or modification of parts of the anatomy;

**'Medicine Schedule'** means the schedule established under section 12 of this Act by which registered medicines are classified in order to prescribe how such products may be made available to the public;

**'Medicinal device'** means goods consisting of an instrument, apparatus, appliance, material or other article (whether for use alone or in combination), together with any accessories or software required for its proper functioning, which is intended to be used in, on, or for human beings for a therapeutic purpose and which does not achieve its principal intended action by pharmacological, chemical, immunological or metabolic means, though it may be assisted in such function by such means;

**'midwife'** means a person who is duly registered as such under the *Medical Services Act 1996*;

**'Minister'** means the Minister responsible for the administration of health and medical services;



**'Ministry'** means the Ministry responsible for the administration of health and medical services;

**'new medicine'** means a medicine which has not yet been registered by the Committee and listed on the Register of Medicines;

**'nurse'** means a person who is duly registered as such under the *Medical Services Act* 1996;

**'package'** in relation to any medicine, means any box, packet, or other article in which a container of the medicine are or are to be cased, covered, enclosed, or contained;

**'pharmacist'** means a person who is duly registered as such under the *Medical Services Act* 1996;

**'prescription'** means the written order in an approved form and issued by a medical practitioner or dentist for the supply of a medicine to any person;

**'Register of Medicines'** means the register, established under section 11 of this Act, of medicines approved for use in Kiribati;

**'regulations'** means regulations made under this Act;

**'Secretary'** means the Secretary responsible for the administration of health and medical services;

**'sell'** includes -

- a. barter and exchange;
- b. offering or attempting to sell, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or keeping or having in possession for sale, or sending, forwarding, delivering or receiving for sale or on sale, or authorising, directing, causing, suffering, permitting or attempting any such acts; and
- c. supplying by way of gift or sample for the purpose of promoting a sale,

whether by wholesale or retail, and sale has a corresponding meaning;

**'supply'** means to sell, or agree to sell, offer, advertise, expose, transmit, convey, deliver, make or prepare for sale, hire, exchange or dispose of for any consideration, transmit, convey or deliver pursuant to a sale, exchange or disposal, or to have in possession for any purposes referred to in this definition;

**'substantial adverse effect'** means a significant response to a medicine which is harmful and unintended, including lack of efficacy, and which occurred at normal human dosage;

**'veterinary surgeon'** has the same meaning as the expression 'approved veterinary surgeon' in section 2 of the *Dangerous Drugs Ordinance* (Cap. 32).

## 5. Application

The provisions of this Act extend to all persons, both public and private sector engaged in manufacturing, importing, exporting, prescribing, compounding, storing, distributing, promoting, supplying or in any other way dealing with medicines.

## 6. Object of this Act

The object of this Act is to protect public health by providing for the effective regulation of medicines in Kiribati to ensure their quality, safety and efficacy.

## PART 2 – THE MEDICINES AND THERAPEUTICS COMMITTEE

### 7. Establishment

There is hereby established a body called the Medicines and Therapeutic Committee, in this Act referred to as 'the Committee'.

### 8. Functions

The functions of the Committees shall be to:

- a. develop, implement and monitor the National Medicines Policy;
- b. establish, maintain and annually revise the Register of Medicines;
- c. schedule all medicines in the Register of Medicines in accordance with the Medicine Schedule;
- d. assess applications and grant licences for medicines to be manufactured, imported into, exported from, prescribed, compounded, stored, distributed, or supplied in Kiribati and maintain a register of such licence-holders;
- e. cancel the registration of, or cause to be recalled from the market, medicines which if continued to be used may be detrimental to public health;
- f. sample, analyse, or otherwise test or arrange for testing of medicines released into the distribution chain, to ensure their compliance with labelled specifications;
- g. monitor the market, including through inspection of premises, to ensure that standards are being maintained and to check for the presence of illegal or counterfeit medicines;
- h. ensure that the promotion and marketing of medicines is in accordance with medicine information as approved by the Committee;
- i. disseminate information on medicines to the health professions in order to promote their rational use;
- j. collect registration and licence application and renewal fees;
- k. monitor and review the implementation of the legislation;
- l. establish a database to record and monitor drug side effects and reactions based on reports provided by health professionals and make appropriate related decisions; and
- m. advise the Minister on matters concerning control and registration of medicines and guidelines, standards and regulations under this Act and propose amendments as deemed necessary.

### 9. Composition, structure and meetings

#### 1) The Committee shall be comprised of the following members:

- a. Director-General of Health;
- b. Director of Hospital Services;
- c. Chief Pharmacist;



- d. Director of Public Health;
  - e. Director of Nursing;
  - f. Director of agriculture and livestock division, from Ministry responsible for the administration of agriculture and livestock;
  - g. A medical practitioner or pharmacist from the private sector as appointed by the Minister; and
  - h. any other medical or pharmaceutical practitioner as appointed by the Minister to serve on the Committee for such term and for such purposes as the Minister thinks fit.
- 2) The Minister shall appoint members of the Committee.
  - 3) The Minister may cancel the appointment of any appointed member and appoint another person in place of such member for the remaining period of office.
  - 4) The appointed members of the Committee shall hold office for a period of 3 years and shall be eligible for reappointment.
  - 5) The Director-General of Health, and if this position is vacant, the Director of Hospital Services, shall be the chairperson of the Committee.
  - 6) The Chief Pharmacist shall be the secretary of the Committee.
  - 7) The powers of the Committee shall not be affected by any vacancy in its membership.
  - 8) The Committee shall meet as required and at least 4 times a year.
  - 9) At any meeting of the Committee, half of the members shall form a quorum.
  - 10) The Committee shall determine the procedures and rules governing its meetings.
  - 11) Any member of the Committee who has a personal material conflict of interest concerning a matter before the Committee must declare that conflict and take no part in the Committee's deliberations on that matter.
  - 12) The Committee shall prepare an annual report to the Minister which contains a report on the activities of the Committee in the preceding 12 months and a financial statement of accounts.
  - 13) The Committee shall appoint such other officers as may be necessary to assist it to perform duties and to exercise powers under this Act. Such officers shall be known as 'authorised officers'.
  - 14) An act in good faith and without negligence by the Minister, any Committee member or an authorised person shall not subject that person to any personal liability.

## PART 3 – REGISTER OF MEDICINES

### 10. Declarations

- 1) When requested or at its own volition, the Committee may make a declaration that a particular substance, class of substance or compound of substances, for the purposes of this Act, is:



- a. a medicine; or
  - b. not a medicine.
- 2) The Committee may by order, when it considers necessary to do so in the interests of public safety, prohibit the supply or importation of a medicine.

11. Register of Medicines

- 1) In accordance with the approved national medicines policy and Kiribati's health care needs, and in consideration of the quality, safety and efficacy of medicines, every medicine approved for use in Kiribati shall be registered with the Committee.
- 2) The Committee shall maintain a Register of Medicines and shall cause this list to be published in Kiribati so that it is readily available to the health profession and the public.
- 3) The Register of Medicines shall comprise of two lists:
  - a. the Kiribati Essential Medicines List (which shall specify the registered medicines necessary to satisfy the public health needs in Kiribati); and
  - b. the Kiribati List of Other Registered Medicines (which shall specify other medicines which the Committee has approved for use in Kiribati).
- 4) The Committee shall annually review the content and may make amendments to the Register of Medicines.

12. Medicine Schedule

- 1) The Committee shall schedule every registered medicine in a category of medicine in accordance with the Medicine Schedule.
- 2) In scheduling medicines, the Committee must take into account:
  - a. whether the medicine is likely to present a direct or indirect danger to human health even when used correctly, if used without the supervision of a doctor or dentist; or
  - b. whether the medicine is frequently used incorrectly, and as a result is likely to present a direct or indirect danger to human health.
- 3) The Medicine Schedule shall classify medicines into the following categories:
  - a. Level 1: medicines which are available from licensed retail outlets without prescription;
  - b. Level 2: medicines which may be dispensed or administered by nurses without prescription;
  - c. Level 2B: medicines which may be dispensed or administered by or under the supervision of medical assistants without prescription;
  - d. Level 3: medicines which must be prescribed by medical practitioners and dispensed by pharmacists;
  - e. Level 4: Narcotic and psychotropic medicines which must be prescribed by medical practitioners in accordance with the Controlled Drugs Prescribing Policy for Narcotic and Psychotropic substances, and dispensed by pharmacists;

- f. Level D: medicines which must be prescribed by dentists and dispensed by pharmacists; and
- g. Level V: medicines which must be prescribed and dispensed by veterinary surgeons or animal health officers.

13. Application for new medicine registration

- 1) A person may apply to the Committee for registration of a new medicine and the proposed classification of the medicine.
- 2) Any application for a medicine registration must be made in the manner and form set out in regulations under this Act, which shall specify the standards to which medicines are to conform, the documentation to be provided to obtain registration and any application fees.

14. Criteria for registration

- 1) A medicine will only be registered if the Committee is satisfied that the medicine:
  - a. is of acceptable quality;
  - b. meets an acceptable safety profile;
  - c. is of demonstrated efficacy;
  - d. is appropriate for use in Kiribati; and
  - e. has satisfactory registration or approval status with international regulators.
- 2) In deciding whether a medicine should be registered, the Committee may consult relevant authorities and health professionals and take into account regulatory information from other countries and relevant international organisations.
- 3) The Committee may impose conditions on the registration of new medicines, including a requirement on the manufacturer to notify the Committee of any material changes made to the medicine.

15. Cancellation, suspension or variation of registration

- 1) The Committee may at any time cancel, suspend or vary the registration of a medicine, either with immediate effect or from such date as specified by the Committee.
- 2) When the Committee orders that a registration is to be cancelled, suspended or varied, the order of the Committee may specify how the order is to take effect, particularly with regard to recalling the medicine from the market and the procedures, if any, for notifying health professionals and the public.
- 3) On a decision to grant, cancel, suspend or vary a registration under this section taking effect, the Committee shall update the Register of Medicines.

16. Application for a review

- 1) Any person who is aggrieved by an order made by the Committee may appeal to the Minister in writing, within 14 days from the date of the order.
- 2) The Minister shall consult within the Ministry and may direct the Committee to rescind, suspend, vary, modify, or reconsider the order against which the appeal has been lodged.



## PART 4 – CONTROLS ON DEALINGS WITH MEDICINES

### 17. Requirement to be authorised or licenced

- 1) A person commits an offence if he or she manufactures, imports, exports, prescribes, compounds, stores, distributes, or supplies a medicine and:
  - a. the medicine is not registered in the Register of Medicines; or
  - b. the person is not authorised or licenced to do so under Part 4 of this Act.
- 2) For the avoidance of doubt, any person, including a person authorised under section 18 or 19 to prescribe, supply, dispense or administer particular levels of medicine, must be licenced to manufacture, import or export medicine.
- 3) Regulations made under this Act may prescribe standard licence provisions and categories, and applicable terms and conditions applying to those categories.

### 18. Authority to prescribe medicine

- 1) The following people are authorised to prescribe medicines, subject to the Medicine Schedule restrictions set out below:
  - a. Medical practitioners are authorised to prescribe any scheduled level of medicines for particular persons under their care.
  - b. Dentists are authorised to prescribe Level D medicines for particular persons under their care.
  - c. Veterinary surgeons and animal health officers are authorised to prescribe Level V medicines for animals under their care.

### 19. Authority to supply, dispense and administer medicine

- 1) The following people or entities are authorised to deal with medicines, subject to the restriction in reference to the Medicine Schedule set out below:
  - a. Licenced retail outlets which are registered under the *Registration of Business Names Act 1988* and the *Companies Ordinance Cap 10A* may supply Level 1 medicines;
  - b. Nurses may dispense and administer Level 1 or Level 2 medicines for particular persons under their care;
  - c. Medical assistants, and nurses being supervised by medical assistants, may dispense and administer Level 1, Level 2 or Level 2B medicines for particular persons under their care;
  - d. Medical practitioners may administer any medicine listed on the Medicine Register for particular persons under their care;
  - e. Pharmacists may obtain, compound, prepare, store, distribute, supply or dispense any medicine listed on the Medicine Register; and
  - f. Veterinary surgeons and animal health officers are authorised to administer Level V medicines for animals under their care.



## 20. Exemptions

- 1) Despite section 17, a medicine not included in the Register of Medicines may be imported without a licence:
  - a. when that importation is for personal medicinal use, evidenced by a letter or certificate of that person's medical practitioner registered outside Kiribati; or
  - b. upon application by a registered medical practitioner or pharmacist, if the Minister authorises (by written notification) the importation of a medicine not included in the Register of Medicines to meet:
    - i. the particular treatment needs of an individual patient; or
    - ii. public health needs during a major disaster or period of emergency.
- 2) The giving of an authorisation under subsection 1 shall not render the Government, the Minister or the Committee liable to a person in respect of loss, damage or injury of any kind suffered by the person as a result of, or arising out of, the use of the medicine.
- 3) Despite section 17, donated medicines may be imported into Kiribati without a licence if:
  - a. the medicines are on the Kiribati Essential Medicines List;
  - b. the prospective donations are fully detailed and approved by the Committee before dispatch of the donation; and
  - c. any other requirements as made by the Committee are satisfied.

## 21. Application for licence

- 1) A person may apply to the Committee for a licence to manufacture, import, export, store, distribute or supply a medicine.
- 2) A licence application shall:
  - a. be made in the manner and form specified in regulations under this Act and contain, or be accompanied by, such information, documents, and other material as may be prescribed;
  - b. identify the medicines that the applicant wishes to deal with and the relevant classification according to the Medicine Schedule;
  - c. specify how the applicant intends to deal with the medicines; and
  - d. be accompanied by the prescribed application fee.
- 3) The Committee may at any time, require the applicant to allow an authorised officer to inspect the premises, equipment and facilities that are or will be used for the storage or supply of medicines.

## 22. Grant, refusal, cancellation, suspension or variation of licence

- 1) Subject to the following provisions of this Act, on any application to Committee under this Part of this Act, the Committee:
  - a. may grant a licence subject to such conditions as it considers appropriate; or
  - b. refuse to grant a licence.

- 2) If granted, the licence shall be in writing and shall:
- a. specify the particular medicine or the scheduled level of medicine which the licence holder is authorised to deal with;
  - b. specify the way in which the licence holder may deal with the medicines;
  - c. require the licence holder to allow an authorised officer to enter the premises to where the medicines are imported or sold and to inspect those premises and inspect and/or sample any medicines stored at those premises;
  - d. be non-transferable; and
  - e. impose any other conditions as the Committee thinks fit.
- 3) A single licence may authorise the licence holder to deal:
- a. with multiple medicines;
  - b. with multiple scheduled levels of medicine; or
  - c. with the medicine in multiple ways.
- 4) A licence commences on the day specified in the licence and remains in force until it is revoked or suspended, or as otherwise specified in the licence.
- 5) (i) The Committee will grant an applicant a licence if the Committee is satisfied that:
- a. the application requirements were complied with;
  - b. the applicant has sufficient knowledge of the obligations of a licensee and of the risks associated with the medicines to which the licence would relate;
  - c. if applicable, the premises of the applicant are appropriate for the purposes for which the licence is sought; or
  - d. the applicant or a body corporate currently or previously controlled by the applicant (directly or indirectly) has not been convicted of an offence against this Act, the *Medical Services Act 1996*, the *Pharmacy and Poisons Ordinance* (Cap. 70), the *Dangerous Drugs Ordinance* (Cap. 23) or the *Customs Act 2005*; and
  - e. the applicant is otherwise a fit and proper person to hold the licence.
- 6) Subject to the following provisions, the Committee may at any time cancel, suspend or vary a license, either with immediate effect or from such date as specified by the Committee.
- 7) The cancellation, suspension or variation may of a licence under this section may be complete or may be limited, including to medicines of one or more descriptions or at particular premises.
- 8) The Committee may exercise its powers under subsection 6 if satisfied that:
- a. the matters stated in the application on which the licence was granted were false or incomplete in a material particular;
  - b. the premises of the licence holder are unsuitable for the display, assembly, storage or sale of medicines;
  - c. the licence holder has breached a licence condition;



- d. the licence holder requests in writing that the licence be cancelled, suspended or varied;
  - e. medicines to which the licence relates can no longer be regarded as products which can safely be administered for the purposes indicated in the licence;
  - f. the licence holder ceases to carry on the medical business or profession to which the licence relates;
  - g. the holder of the licence holder has without reasonable excuse failed to comply with a requirement imposed on the holder under this Part to provide information to the Committee;
  - h. the licence holder or a body corporate currently or previously controlled by the applicant (directly or indirectly) has been convicted of an offence against this Act, *Medical Services Act 1996*, the *Pharmacy and Poisons Ordinance* (Cap. 70), the *Dangerous Drugs Ordinance* (Cap. 23) or the *Customs Act 2005*; or
  - i. the applicable fees have not been paid within 28 days of becoming payable.
- 9) Where the Committee proposes to refuse, cancel, suspend or vary a licence, or to grant a licence otherwise than in accordance with the application, the Committee shall, unless it considers that to do otherwise would create an imminent risk of death, serious illness or injury, give the applicant or licence holder:
- a. written notice of the proposed decision of the Committee; and
  - b. an opportunity within 14 days to make submissions to the Committee in relation to the proposed decision.
- 10) The Committee shall take any submissions made in accordance with subsection 5(b) into account before making a decision relating to the refusal, cancellation, suspension or variation of a licence.
23. Application for a review
- 1) Any applicant or licence holder who is aggrieved by an order made by the Committee may appeal to the Minister in writing within 14 days from the date of the order.
  - 2) The Minister shall consult within the Ministry and may direct the Committee to rescind, suspend, vary, modify, or reconsider the order against which the appeal has been lodged.
24. Register of medicine license holders
- 1) The Committee shall maintain a register of medicine licence holders, which shall list the licence holders authorised to deal with medicines and the applicable conditions and restrictions applying to the respective licences.
  - 2) On a decision to grant, cancel, suspend or vary a licence under section 22 taking effect, the Committee shall update the list.
25. Clinical Trials
- Any person who manufactures, imports, prescribes, compounds, stores, distributes or supplies any medicine for the purposes of a clinical trial, unless such trial is authorised by regulations under this Act, commits an offence.



## PART 5 – PHARMACOVIGILANCE

### 26. Duty to report adverse effects

- 1) If at any time any importer, manufacturer or supplier of medicines or a person who administers medicines has reason to believe that a substantial adverse reaction has arisen from the use of the medicine (whether in Kiribati or elsewhere), the person must immediately notify the Committee of the nature of those effects and the circumstances in which they have arisen, so far as they are known to that person.
- 2) Any person who fails to provide information required under this section commits an offence and is liable on conviction to a fine not exceeding \$2000.

## PART 6 – LABELLING, PACKAGING, AND PROMOTION

### 27. Clear labelling and packaging requirement

- 1) All dispensed medicines must be clearly labelled and packaged to ensure that medicines are correctly described and readily identifiable and their safe use is promoted.
- 2) Regulations made under this Act may prescribe requirements for labels, packages, advertisements or may prohibit certain advertisements.
- 3) Particular advertisements may be approved by the Committee in writing.
- 4) A medicine that is not labelled or packaged, or not labelled or packaged as required by the regulations made under this Act or with written approval of the Committee, shall be deemed to be labelled or packaged contrary to subsection 1.
- 5) Any person that publishes, or arranges for any other person to publish, any advertisement for a medicine in Kiribati, unless such advertisement is authorised by regulations under this Act, commits an offence.
- 6) Any person that labels, packages, sells or advertises a medicine in a manner that is false, misleading or deceptive as regards its character, constitution, value, potency, quality, composition, merits or safety, commits an offence.

## PART 7 – POWERS OF COMMITTEE

### 28. General powers

The Committee has the powers to do all things necessary or convenient to be done for, or in connection with the performance of its functions under this Act.

### 29. Powers of entry, search, inspection and seizure

- 1) For the purpose of discharging his or her functions under the legislation, an authorised officer may at any reasonable time enter and inspect any place, premises or vehicle which the authorised officer reasonably suspects to be used for or in connection with the manufacture, import, export, preparation, storage, distribution or supply of any medicine and:
  - a. take samples of any medicine or of any substance relating to a medicine;
  - b. examine records or other documents relating to any medicine;
  - c. take photographs;

- d. make any enquiries as is considered necessary to assist the exercise of any function or power under this Act; and
- e. seize without payment any medicine or other substance, article or document which he or she has reasonable cause to believe to be a substance, article or document in which or by means of which an offence under this Act is being or has been committed.

- 2) On demand by any person in any premises or vehicle, or claiming any interest in any seized property, in or in respect of which any power is exercised under this section, the authorised officer shall identify himself or herself and produce evidence of his position as an authorised officer.
- 3) Subsection 1 does not authorise forcible entry by an authorised officer to any premises except under the authority of a warrant.
- 4) Where any property is seized pursuant to subsection 1, the Committee may decide to detain or store the seized property at any place it thinks fit until released or disposed of under this Act.
- 5) If the Committee after investigation is satisfied that there has not been a contravention of any of the provisions of this Act, the seized property will be returned to the person from they were seized.
- 6) If the Committee is satisfied that there has been a contravention of any of the provisions of this Act, it may retain the property for as long as is necessary for those purposes, and thereafter dispose of it with the consent of the owner of the property or the person previously in possession of the property person, or otherwise deal with the property as the Court may direct.

### 30. Power to obtain information

- 1) In relation to any matter relevant to the operation or enforcement of this Act, an authorised officer or the Committee may, by written notice served on a person, require a person (either by oral or written requisition) to provide any information or records within such time and in such format as specified in the notice.
- 2) A person who fails to provide the information required under this section without reasonable cause commits an offence and shall be liable on conviction to a fine not exceeding \$1000.

### 31. Direction to secure compliance

- 1) If any provision of this Act has not been complied with, the Committee or an authorised officer may in writing direct any person who has contravened the provision by such non-compliance to take within a specified time, not exceeding 14 days, such steps as may be specified to prevent any further contravention and to remedy the matters in respect of which the non-compliance has occurred.
- 2) A person to whom a direction is issued under this section and who does not comply with the direction commits an offence.



## PART 8 – GENERAL OFFENCES AND PENALTIES

### 32. General Offences

- 1) Any person who manufactures, imports, exports, prescribes, compounds, stores, distributes or supplies a medicine that -
  - a. is unfit for use in humans;
  - b. is adulterated;
  - c. has upon it any natural or added deleterious substance which renders it injurious to health; or
  - d. has been manufactured, prepared, preserved, packaged or stored for sale under insanitary and/or unfavourable conditions,commits an offence.
- 2) Any person who manufactures, imports, exports, prescribes, compounds, stores, distributes or supplies any medicine which is a counterfeit or is known or suspected to be a counterfeit commits an offence.
- 3) Where a standard is prescribed in regulations for any medicine, any person who labels, packages, sells, offers for sale, distributes or promotes a medicine which does not conform to such standard in such manner as is likely to be mistaken for the medicine for which the standard has been prescribed commits an offence.
- 4) Where a standard has not been prescribed for a medicine, but a standard for the medicine is contained in any of the following publications -
  - a. the European Pharmacopoeia;
  - b. the British Pharmacopoeia;
  - c. the British Pharmaceutical Codex;
  - d. the United States Pharmacopoeia;
  - e. the United States National Formulary; or
  - f. the Therapeutic Goods Standards of Australia, thenno person shall label, package, sell or advertise any substance in such a manner that it is likely to be mistaken for that medicine, unless the substance complies with the standard contained in that publication.
- 5) Any person who supplies any medicine by means of an automatic vending machine, except as may be permitted by regulations made under this Act, commits an offence.
- 6) Any person who knowingly make or aids and assists in a false or misleading statement or representation either:
  - a. orally or in writing to the Committee or any authorised officer engaged in the exercise of its powers under this Act; or
  - b. in an application for inclusion of a medicine on the Register of Medicines or for a licence under this Act



commits an offence.

7) Any person who -

- a. wilfully obstructs an authorised officer acting in pursuance of this Act and duly authorised so to act by the Committee by -
  - i. assaulting, abusing or intimidating the authorised officer;
  - ii. directly or indirectly deliberately preventing any person from being questioned by the authorised officer;
  - iii. refusing to allow an authorised officer to take any medicine or related material that the authorised officer reasonably requires;
  - iv. removing, altering or interfering with any property seized under this Act; or
  - v. in any other way hindering or attempting to hinder the authorised officer;
- b. wilfully fails to comply with any requirement properly made to him or her by a person so acting under section 30 of this Act; or
- c. without reasonable cause fails to give to a person so acting any other assistance or information which that person may reasonably require of him or her for the purpose of the performance of his functions under this Act,

commits an offence.

33. Penalties

A person who contravenes or fails to comply with any provision of this Act creating an offence is liable on conviction, where there is no penalty provided, to -

- a. in the case of a first offence for an individual, a fine not exceeding \$2000 and imprisonment for a term not exceeding 12 months;
- b. in the case of a second offence or subsequent offences, a fine not exceeding \$5000 and imprisonment for a term not exceeding 24 months; and
- c. in the case of a body corporate, a fine not exceeding \$5000 for a first offence and \$10,000 for a second or subsequent offences.

## PART 9 – MISCELLANEOUS PROVISIONS

34. Offences by corporate bodies

If a body corporate commits an offence against this Act, every person who is a board member or director or is otherwise concerned in the management of the body also commits the offence as an individual, unless the person proves:

- a. that the offence was committed without his/her consent or knowledge; and
- b. that he/she exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his or her functions in the corporate body and to all circumstances.

35. Additional powers of the Court

- 1) If a person is convicted of an offence under this Act, the court, in addition to any other penalty, may order:

- a. if a person is convicted under section 32(7), that the seized property be destroyed by an authorised officer and that the person shall pay the reasonable costs incurred in confiscating and destroying the property
  - b. that a person's licence under this Act be cancelled.
- 2) Costs payable under subsection 1 may be recovered in the same way as a fine.

36. Regulations

- 1) The Minister, acting in accordance with the advice of the Cabinet and after consultation with the Committee, may make regulations under this Act prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to give effect to this Act.
- 2) Without limiting subsection 1 or affecting any other regulation-making power in this Act, regulations made by the Minister may prescribe:
  - a. the application fees in respect of applications under this Act;
  - b. the manner and form of an application for inclusion of a new medicine on the Register of Medicines or an application for any licence under this Act;
  - c. conditions applying to licence classes and medicine registrations under this Act;
  - d. standards for medicines;
  - e. information requirements for medicine labels and packages; or
  - f. requirements or prohibitions relating to medicine advertisements or clinical trials.

## Part 10 – REPEAL, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

37. The *Pharmacy and Poisons Ordinance* (Cap. 70) and regulations made under that Ordinance are hereby repealed.

38. Amendment to the *Value Added Tax Act* 2013

- 1) This section amends the *Value Added Tax Act* 2013.
- 2) Schedule 2 of that Act is amended by repealing the definition of 'medicine' and substituting the following definition –

'medicine' has the same meaning as the expression 'medicine' in section 4 of this Act.

39. Relationship with the *Dangerous Drugs Ordinance* (Cap. 23)

- 1) In the case of a medicine that is a dangerous drug within the meaning of the *Dangerous Drugs Ordinance* (Cap. 23); the prohibitions, conditions, and requirements contained in or imposed under this Act shall be in addition to the prohibitions, conditions, and requirements contained in or imposed under that Act to the extent that they are not inconsistent.
- 2) Nothing in the *Dangerous Drugs Ordinance* (Cap. 23) shall authorise any person to prescribe, manufacture, pack, label, sell by wholesale or retail, administer, procure, receive, store, use, or otherwise have in that person's possession any medicine contrary to the provisions of this Act.

40. Transitional Provisions

- 1) Every person who, immediately before the commencement of Part 4 of this Act, held a Medicine Licence under the *Pharmacy and Poisons Ordinance* (Cap.70) shall be deemed to be licensed to sell the medicines listed on the licence until the date on which the licence would have expired if that Act had not been repealed.
- 2) Section 17(1) of this Act shall not have effect in relation to a person who prescribes, compounds, stores, distributes or supplies medicines if the medicines were imported or procured for supply or distribution with the approval of Ministry at any time before the date of commencement of this Act.



# EXPLANATORY MEMORANDUM

## Introduction

A sustainable and effective pharmaceutical system is crucial for protecting and promoting public health in Kiribati. To this end, sound medicinal regulation is essential to establish a legal framework which ensures that only quality, safe and effective medicines enter the supply system. Medicines need to be regulated, as consumers are not equipped to independently assess their efficacy, safety, and quality.

Regulation is particularly important in the current context of the growing need for essential medicines due to the expanding burden of diseases and the ever-increasing complexity of a sophisticated pharmaceutical sector in which private actors have more and more involvement, a phenomenon which can be observed in Kiribati. While the increased role for the private sector has the potential to improve health service provision by facilitating increased medicinal options for the public, it is important that government regulation of the sector evolves correspondingly to assume a more prominent role.

The medicinal regulation provisions within the current *Pharmacy and Poisons Ordinance* (Cap. 70) have been in force since 1949. The provisions, being outdated and cumbersome to administer, have been superseded by current practice which is at odds with this legislation. In addition, many standard aspects of medicinal regulation are not contained in the ordinance.

This Act seeks to regulate medicines by: establishing a regulatory authority, the Medicinal and Therapeutics Committee, to regulate the importation, supply and distribution of medicines; introducing appropriate controls and standards in dealings with medicines; establishing legal requirements to ensure that medicinal information is accurate; and implementing strong enforcement mechanisms. Effective coordination is assured through the establishment of a central regulatory body with overall responsibility and accountability for all aspects of medicine regulation.

This Act is designed to better meet the needs of Kiribati's modern health care system. It has been drafted to be appropriate to the context of Kiribati, for example in creating a system where marketing authorisation (registration) for medicines can be based upon assessments made by a foreign medicine regulation authority (such as through the WHO Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce). It is in keeping with international practice for medicines to be regulated through a distinct piece of legislation, which is why a new act is being introduced rather than the *Pharmacy and Poisons Ordinance* (Cap.70) being revised. This Act is comprehensively drafted to cover all areas of pharmaceutical activity in Kiribati.

The Act will enable Kiribati to better regulate medicines in the country and improve public health. It creates a legislative framework which is in tune with the existing situation and national medicine policy and which, through dedicating specific areas of application for regulations to be issued, is also sufficiently flexible and dynamic. In this way, the legislation and regulations work together to achieve their objective. As knowledge about medicines is continually evolving, with new information on indications, side effects, and interactions with other medicines being constantly discovered, medicine registration and licensing must be a dynamic process, to align with continual inevitable developments in the pharmaceutical sector.

## Part 1 – Preliminary

Part 1 begins with three standard provisions: short title, commencement, and the binding of the Government.

Section 4 of the Act provides definitions of certain words and expressions used in the Act.



Section 5 makes it clear that the Act applies to everyone in Kiribati, including the Government and public servants and the private sector while Section 6 sets out the objects of the Act.

#### Part 2 – The Medicines and Therapeutics Committee

Section 7 establishes the Medicine and Therapeutics Committee, the committee with designated responsibility to monitor and regulate all medicines in Kiribati. The functions of the Committee are listed in section 8, and its composition, structure and the conduct of its meetings is provided for in section 9.

#### Part 3 – The Register of Medicines

Part 3 creates a system of approving and registering medicines for use in Kiribati. The Committee has the power to declare particular substances to be medicines (section 10) and is required to maintain two lists which together form the Register of Medicines: the Kiribati Essential Medicines List and the Kiribati List of Other Registered Medicines (section 11). Having the Committee maintain these list, and not including a prescriptive list of medicines in the legislation itself, will help to ensure that the legislation is able to remain current and flexible as new medicines are created and introduced.

The Committee classifies every medicine according to a Medicine Schedule in order to stipulate how the medicine is to be made available to the public (section 13). New medicines may be added to the list by the Committee or by application (section 13) which the Committee considers in light of prescribed criteria (section 14).

The Committee has the power to cancel, suspend or vary the registration of a particular medicine (section 15) and there are avenues for reviews against this decision, establishing an administrative safeguard (section 16).

#### Part 4 – Controls on dealing with medicines

Any dealings with medicine are prohibited unless the medicine is registered and the person has an appropriate licence or authority (section 17). The licence provision is a notable departure from the current framework set out in the ordinance, through which only pharmacists are able to import or supply medicines. Providing for licensing for others to be able to deal with medicine, particularly importers or suppliers, will facilitate greater access to medicines while ensuring that the Committee has oversight and regulatory control over such medicines.

Particular health professionals are authorised to prescribe certain medicines in line with the restrictions in the Medicine Schedule (section 18) and similarly, authorities for supplying, dispensing and administering medicines in line with the Medicine Schedule is set out in the Act (section 19). There is specific provision for licenced retail outlets to be able to sell Level 1 medicines; while a similar provision exists in the current ordinance, the list of substances which they may sell do not include any modern 'over the counter' medicines which should be easily accessible to the public. Linking the authority back to the Medicine Register and Medicine Schedule will allow the Act to keep up to date with current medicinal developments.

Certain exemptions apply to the licence or authority requirement. These relate to personal use, needs of a particular patient or during a public health emergency, and donations made to Kiribati (section 20).

The application process for licences is contained in section 21, and the Committee has the power to grant, refuse, cancel or suspend a licence, in accordance to listed criteria, and to impose additional conditions (section 22).

There are options for review rights against licence decisions (section 23). The Committee will maintain a register of licence holders (section 24) and any clinical trials are prohibited unless

regulations specifically authorise it (section 25). This protects the people of Kiribati from unauthorised clinical trials but also allows for possible clinical trials to take place in the future, should new developments arise.

#### Part 5 – Pharmacovigilance

There are currently no legal requirements to facilitate reports of adverse drug reactions, and section 26 accordingly establishes such a requirement.

#### Part 6 – Labelling, Packaging, and Promotion

All dispensed medicines must be clearly labelled and packaged (section 27). Any false or misleading promotion or advertisement of medicines is prohibited, and all advertisements are prohibited, although there is scope for regulations to allow for advertisements should future developments warrant (section 27).

#### Part 7 – Powers of Committee

The Committee has general powers in order to perform its functions under the Act (section 28) as well as specific powers of entry, search, inspection and seizure (section 29). It may obtain information by written notice (section 30) and make directions to secure compliance with the Act (section 31).

#### Part 8 – General Offences and Penalties

General offences relating to medicines are set out in section 32, including in respect of adulterated, or counterfeit or substandard medicines, sale by vending machines, the making of false statements or obstruction of an authorised person. Penalties (where not provided elsewhere) are set out in section 33.

#### Part 9 – Miscellaneous Provisions

Part 9 deals with miscellaneous matters, including offences by corporate bodies (section 34), the powers of the court (section 35), the power of the Minister to make regulations (section 36).

#### Part 10 – Repeal, Consequential Amendments and Transitional Provisions

The *Pharmacy and Poisons Ordinance* (Cap. 70) and the regulations under that ordinance are repealed (sections 38) and amendments made to references in the *Value Added Tax Act 2013* is noted in section 39. This new Act ensures that there is just one regulatory system applicable to pharmacists.

The relationship with the *Dangerous Drugs Ordinance* (Cap. 23) is clarified (section 39).

Transitional provisions are set out in section 40: while it is highly unlikely that any licences exist under the ordinance, this section protects the rights of any such licence-holders. In addition, any person who deals with medicines which were imported or procured with the approval of the Ministry of Health and Medical Services before the commencement date of the Act will not be deemed to have committed an offence.



**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Medicines Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 23<sup>rd</sup> April 2018 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 13 day of October 2018.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**